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# federal register

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AI10**

### Prevailing Rate Systems; Removal of Umatilla County, OR, From Spokane, WA, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing an interim rule to remove Umatilla County, OR, from the area of application of the Spokane, WA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area.

**DATES:** This interim rule becomes effective on January 1, 1998. Comments must be received by January 22, 1998.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Mark Allen at (202) 606–2848, or send an e-mail message to maallen@opm.gov.

**SUPPLEMENTARY INFORMATION:** The Spokane wage area is presently composed of one survey area county (Spokane, WA) and three area of application counties (Adams County, WA; Walla Walla County, WA; and Umatilla County, OR). The removal of Umatilla County from the area of application of the Spokane wage area is appropriate because there are no NAF FWS employees stationed in Umatilla County and no Federal agency anticipates future employment in the county. Under section 5343(a)(1)(B)(I) of title 5, United States Code, NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.''

The Federal Prevailing Rate Advisory Committee, the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because it is not in the public interest for Umatilla County to remain in the Spokane wage area after December 31, 1997. Under section 532.205 of title 5, Code of Federal Regulations, the highest minimum wage applicable within a wage area must be applied to the entire wage area. The current Federal minimum wage is $5.15 an hour, and the minimum wage in the State of Oregon will increase to $6.00 an hour on January 1, 1998. If Umatilla County is not removed from the Spokane wage area by January 1, 1998, the pending increase in the minimum wage for the State of Oregon would require that pay rates for NAF FWS employees who are stationed in Adams, Spokane, and Walla Walla Counties, WA, be increased to account for the higher minimum wage in the State of Oregon even though none of the NAF FWS employees who are stationed in the Spokane wage area work in Oregon.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B of part 532 is amended by revising the wage area listing for the Spokane, Washington, nonappropriated fund Federal Wage System wage area to read as follows:

**Appendix D to Subpart B of Part** 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Washington

* * * * *

Spokane

*Survey Area*

Washington:
Spokane

*Area of Application. Survey Area Plus*

Washington:
Adams
Walla Walla

* * * * *

[FR Doc. 97–33435 Filed 12–22–97; 8:45 am]

**BILLING CODE 6325–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1209

**[FV–97–705IFR]**

### Mushroom Promotion, Research, and Consumer Information Order; Referendum Procedures

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule provides procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether

mushroom producers and importers favor continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order). In order to continue, the Order must be approved by a simple majority of producers and importers voting in the referendum and that majority must represent more than 50 percent of the mushrooms produced and imported by those voting in the referendum. These procedures will also apply to any subsequent referenda to amend, continue, or terminate the order.

**EFFECTIVE DATE:** December 24, 1997. Comments must be received by January 22, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), 1400 Independence Avenue, Room 2535–S, Stop Code 0244, Washington, DC 20250–0244, fax: (202) 205–2800. Three copies of all materials should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535–S, Stop Code 0244, Washington, DC 20250–0244, telephone (202) 720–6930 or (888) 720–9917.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6107–6112), hereinafter referred to as the Act.

This rule provides the procedures under which the referendum will be conducted.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1927 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

**Executive Order 12866 and Regulatory Flexibility Act**

**Paperwork Reduction Act**

This rule has been determined not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of this rule on small entities.

The Act became effective on November 20, 1990. The Order, which is authorized under the Act, became effective on January 8, 1993.

Section 1926 of the Act provides that the Secretary shall conduct a referendum effective 5 years after the date on which the Order became effective. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum.

There are approximately 134 producers and 4 importers of fresh mushrooms covered by the program. Small agricultural service firms, which will include the importers who will vote in the referendum, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5 million and small agricultural producers as those having annual receipts of $500,000. Only one importer has been identified to have $5 million in annual sales. In addition, there are 134 producers at or over the $500,000 annual sales receipts threshold. Therefore, it could be concluded that a majority of producers and importers are not considered small businesses.

The total volume of mushroom sales in the United States during the 1996–97 production year (July 1, 1996, through June 30, 1997) was 776.7 million pounds (553.8 million pounds for the fresh market and 222.9 million pounds for the processed market). The value of sales for the crop was $765.8 million. Historically, Pennsylvania produced 45 percent of total volume of sales, followed by California with 17 percent, Florida with 5 percent, Ohio with 2 percent, and Michigan with 2 percent. Eighteen other States account for the remainder.

U.S. fresh market exports of mushrooms totaled 5.3 million pounds from July 1996 through June 1997, with a value of $20 million. Canada was the principal destination, accounting for about 74 percent of the poundage and about 38 percent of the value of U.S. exports. Japan accounted for 14 percent of the quantity exported, and 40 percent of the value of exports.

Fresh mushroom imports into the United States for the same period were about 5.1 million pounds, with a value of about $12.1 million. About 82 percent of that poundage and 86 percent of the value came from Canada, and about 10 percent of the poundage and about 5 percent of the value came from the People's Republic of China.

This rule provides the procedures under which mushroom producers and importers may vote on whether they want the mushroom promotion and research program to continue. Such a referendum is required by the Act. There are approximately 138 eligible voters. In addition, these procedures will apply to any subsequent referenda to amend, continue, or terminate the order.

The Department will keep all of these individuals informed throughout the referendum process to ensure that they are aware of and are able to participate. In addition, trade associations and related industry media will receive news releases and other information regarding the referendum.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether they want the program to continue or not.

The Department considered requiring eligible voters to vote in person at various Department offices across the

country. However, conducting the referendum from one central location is more cost effective for this program. In addition, the Department will accept ballots sent by fax as well as by mail. The fax number to be used will be published soon in the referendum order. The Department will provide easy access to information for potential voters through a toll free telephone line.

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. It is estimated that there are 138 producers and importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 34.5 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

**Background**

The Act authorized the Secretary to establish a national mushroom promotion, research, and consumer information program. The program is funded by an assessment levied on producers and importers of more than 500,000 pounds annually. Each producers and importer covered by the program pays an assessment of 0.45 cents per pound of fresh mushrooms.

Assessments are used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 1926 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum effective 5 years after the date on which the Order became effective. The Order became effective on January 8, 1993. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period.

In accordance with § 1923 of the Act, a producer is defined in the Order as any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year. Importer is defined as any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

This rule provides the procedures under which mushroom producers and importers may vote on whether they want the mushroom promotion and research program to continue. There are approximately 138 eligible voters. These procedures are similar to those published (57 FR 31948) prior to the mushroom order going into effect. This interim final rule, however, provides that ballots are to be cast only by mail or fax and not at polling places.

Persons voting in a referendum will certify their eligibility to vote and will designate their status as either a mushroom producer or importer. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period. The representative period will be announced in a referendum order at a later date.

This rule will add a new subpart which establishes procedures to be used in a referendum. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified herein will be considered prior to finalizing this action.

After consideration of all relevant material, it is found that the order provisions subject to this action tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this action into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**, because: (1) This action provides procedures to be used in connection with the referendum which will take place in early 1998; (2) the Act requires that a referendum be conducted 5 years after the date on which an order became effective; (3) these procedures are very similar to procedures used in other programs and to the procedures used for the initial referendum on the mushroom program; and (4) the 30-day comment period will provide interested persons sufficient time to comment prior to the issuance of a final rule.

**List of Subjects in 7 CFR Part 1209**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations is amended as follows:

## PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1209 continues to read as follows:

**Authority:** 7 U.S.C. 6101–6112.

2. In part 1209, subpart C is added to read as follows:

## Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

Sec.



### § 1209.300 General.

A referendum to determine whether eligible producers and importers favor continuation of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

### § 1209.301 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of

the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures'', wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of fresh mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produces, on average, over 500,000 pounds annually of fresh mushrooms during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imports, on average, over 500,000 pounds annually of fresh mushrooms during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

### § 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Ballots are to be cast by mail or fax.

### § 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of mushrooms produced by the voting producer during the representative period; and

(3) The total volume of mushrooms imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) Collect and safeguard ballots received by fax.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results.

(g) Prepare a report on the referendum.

(h) Prepare an announcement of the results for the public.

### § 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

### § 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof.

Ballots invalid under this subpart shall not be counted.

**§ 1209.306 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

**§ 1209.307 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

Dated: December 11, 1997.

**Sharon Bomer Lauritsen,**

*Associate Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 97–32812 Filed 12–22–97; 8:45 am]

BILLING CODE 3410–02–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**RIN 3150–AF73**

### Codes and Standards; IEEE National Consensus Standard, Withdrawal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission is withdrawing a direct final rule that would have amended Commission's regulations to incorporate by reference the most recent published version of IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in **the Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Satish K. Aggarwal, Senior Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6005, Fax (301) 415–5074 (e-mail: SKA@NRC.GOV).

**SUPPLEMENTARY INFORMATION:** On October 17, 1997 (62 FR 53933), the Nuclear Regulatory Commission published in the **Federal Register** a direct final rule amending its regulations at 10 CFR 50.55a(h) to incorporate by reference the most recently published version of a national consensus standard. The direct final rule was to become effective on January 1, 1998. The NRC also concurrently published an identical proposed rule on October 17, 1997 (62 FR 53975). In these documents, the NRC indicated that if it received significant adverse comments in response to this action, the NRC would withdraw the direct final rule and would consider the comments received as in response to the proposed rule and address these comments in a subsequent final rule. The NRC has received significant adverse comments on the direct final rule. Therefore, the Commission is withdrawing the October 17, 1997, direct final rule. The public comments received will be addressed in a subsequent final rule issued in either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Dated at Rockville, Maryland, this 16th day of December, 1997.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 97–33424 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 960

**[No. 97–N–10]**

### Questions and Answers Regarding The Affordable Housing Program

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Staff interpretation of affordable housing regulations.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is publishing Questions and Answers regarding the Affordable Housing Program (AHP). The Questions and Answers have been prepared by staff of the Finance Board in response to questions about changes in the Finance Board's regulation governing the AHP that will go into effect on January 1, 1998. The Questions and Answers constitute informal staff guidance for Finance Board personnel, the Federal Home Loan Banks (Bank), Bank members, and program participants. The Answers are intended to be interpretive of the Finance Board's regulation governing the AHP, and are not statements of agency policy. The Questions and Answers have not been considered or approved by the Board of Directors of the Finance Board.

**FOR FURTHER INFORMATION CONTACT:** Richard Tucker, Deputy Director, Compliance Assistance Division, (202) 408–2848, or Janet M. Fronckowiak, Program Analyst, Compliance Assistance Division, (202) 408–2575, or Diane E. Dorius, Associate Director, Program Development Division, (202) 408–2576, Office of Policy, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**SUPPLEMENTARY INFORMATION:** On August 4, 1997, the Finance Board published a final rule amending its existing regulation governing the AHP. *See* 62 FR 41812 (Aug. 4, 1997). The final rule will become effective on January 1, 1998. In the months following publication of the final rule, the Finance Board has provided training to the staffs of the Banks to assist them in making a smooth transition to operation under the amended AHP regulation. A number of questions of regulatory interpretation were raised by Bank staff as a result of the Finance Board's training sessions. The staff of the Finance Board has prepared answers to the most frequently asked questions. The Questions and Answers constitute informal interpretive guidance for Finance Board personnel, the Banks, Bank members, and program participants. The Answers are intended to be interpretative of the AHP regulation, not statements of agency policy, and they have not been considered or approved by the Board of Directors of the Finance Board.

The Questions and Answers are grouped by the provision of the AHP regulation that they discuss and are presented in the same order as the regulatory provisions. The text of the Questions and Answers follows:

**Text of the Questions and Answers**

*Questions and Answers Regarding the AHP*

Definitions (§ 960.1)

*Low- and Moderate-Income and Very Low-Income Household Eligibility for Current Occupants:*

Q1. When a rental project involves both purchase and rehabilitation, which point in time should be used for purposes of determining household eligibility?

A1. The regulation permits a choice of determining income eligibility either at the time of completion of the purchase or at the time of completion of the rehabilitation.

Q2. In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, can an occupying household that is a very low-income or a low- or moderate-income household at the time the AHP application is submitted to the Bank be deemed to be a very low-income or a low- or moderate-income household at

the time the purchase or rehabilitation of the housing is completed?

A2. Yes.

*Median Income for the Area:*

Q3. How can median income standards published by the U.S. Department of Agriculture (USDA) be available for all projects in a Bank's District if USDA publishes median income standards only for rural areas?

A3. USDA income standards would be applicable only to the rural areas identified in the USDA standards. A Bank selecting this median income standard would have to select another income standard to be used in non-rural areas.

*Sponsor:*

Q4. Does the definition of ''sponsor'' include a not-for-profit organization that owns a for-profit entity that is the general partner in the partnership that owns an AHP-eligible rental project?

A4. Yes.

Advisory Councils (§ 960.4)

*Terms (section 960.4(d)):*

Q1. Is each Advisory Council member required to be appointed for a three-year term?

A1. Yes.

Q2. Do terms already served or which currently are being served by Advisory Council members who are in office on January 1, 1998, count toward the limit of three consecutive terms?

A2. No. Only terms that begin on or after January 1, 1998, the effective date of the revised AHP regulation, count toward the limit of three consecutive terms.

Minimum Eligibility Standards for AHP Projects (§ 960.5)

*Experienced Counseling Organization (section 960.5(a)(2)(ii)):*

Q1. What is a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling?

A1. A program such as one that is provided by a counseling organization approved by HUD or a state or local agency would qualify. Programs that are based on counseling guides such as those provided by the American Homeowners Education and Counseling Institute also would meet this requirement.

*Homeownership Set-Aside Incentives (section 960.5(a)(6)):*

Q2. What are financial or other incentives to a household that are required of a member that provides mortgage financing?

A2. A Bank may determine what it considers to be financial or other incentives. For example, financial incentives could include lower (or foregone) origination fees, other discounted fees, reduced interest rates, lower downpayment requirements, or reductions in other closing costs. Two examples of other non-financial incentives are using underwriting standards that are more flexible than the member's usual practice, and making loans with longer terms than the member usually makes.

*Counseling Costs (§ 960.5(a)(7)):*

Q3. Under what circumstances can counseling costs be paid by AHP subsidies?

A3. For the competitive application program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit and the cost of the counseling has not been covered by another funding source, including the member.

For the homeownership set-aside program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; the cost of the counseling has not been covered by another funding source, including the member; and the AHP subsidies are used to pay only for the amount of such reasonable and customary costs that exceed the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. A member may certify to the amount it spent, including in-house costs, over the preceding three years. If a member is not covering the cost of counseling and has not paid for counseling costs in the previous three years, AHP subsidies may be used to pay for reasonable and customary counseling costs incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit.

*Direct Subsidy Processing Fees (§ 960.5(b)(4)(iii)):*

Q4. Does the prohibition on using AHP funds to pay for direct subsidy processing fees cover fees for costs incurred by a member in order to pass on the subsidy, such as legal and underwriting costs?

A4. Yes.

*Member Subsidy Limits (§ 960.5(b)(10)):*

Q5. A Bank may establish certain eligibility requirements for its AHP. May the limitation on the amount of AHP subsidy available per member be based on a percentage of a member's assets or a percentage of the total available AHP funds?

A5. District eligibility requirements must apply equally to all members. A limitation based on a percentage of a member's assets would result in larger members being eligible to compete for more AHP funds than smaller members; therefore, such a limitation would not be permitted. However, since limiting each member to no more than a certain percentage of total available AHP funds would apply equally to each member, such a limitation would be permitted.

Procedure for Approval of AHP Applications for Funding (§ 960.6)

*Scheduled Funding Periods (§ 960.6(b)(1)):*

Q1. If a Bank schedules one funding period per year, but is unable to allocate its entire annual AHP contribution in that period, may the Bank hold a second funding period to allocate the remaining subsidies, even if the second funding period does not have a comparable amount of funds?

A1. Yes. The concept of allocating comparable amounts in each funding period is based on the premise that a Bank schedules more than one funding period a year. If a Bank plans one funding period and an insufficient number of qualifying applications are approved in that period, a Bank may hold a second funding period to allocate the unused subsidies and that period does not have to be comparable in amount to the first period.

*Nominal Price (§ 960.6(b)(4)(iv)(A)):*

Q2. Regarding the conveyance of government-owned or other properties for a ''nominal'' price, what is a ''nominal'' price?

A2. A small, negligible amount, most often one dollar, is a nominal price. Modest expenses related to the conveyance of the property may also be paid.

*Not-for-profit Organization/ Government Entity Sponsor Scoring Criterion (§ 960.6(b)(4)(iv)(B)):*

Q3. Does the definition of ''sponsor'' in § 960.1 apply to the not-for-profit organization/government entity sponsor scoring criterion such that a not-for-profit or government entity sponsor of a rental project must have an ownership interest in the project in order for the project to get any points under that criterion?

A3. Yes.

*First District Priority (§ 960.6(b)(4)(iv)(F)):*

Q4. If a Bank chooses more than one criterion for which an AHP application may receive points under the First District Priority scoring category, how are points to be allocated among those criteria?

A4. If a Bank permits applications to receive points for meeting more than one criterion under the First District Priority scoring category, the Bank must split the total number of points for the First District Priority among those criteria. The sum of the points allocated to each of the criteria must equal the total number of points allocated to the First District Priority. Each application must be scored according to the extent to which it meets each of the criteria. An application cannot receive more than the total number of points allocated to a particular criterion if the application meets that criterion. If an application meets all the criteria under the First District Priority, the application cannot receive more than the total number of points allocated to the First District Priority.

*Subsidy-Per-Unit (§ 960.6(b)(4)(iv)(H)):*

Q5. Is subsidy-per-unit based on AHP-targeted units only?

A5. Yes. The project is scored based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-targeted unit. AHP-targeted units are any units that will be purchased by, or reserved for occupancy by and affordable for, households with incomes of 80 percent or less of area median income.

*Funding Alternates (§ 960.6(b)(5)(i)):*

Q6. If sufficient AHP funds are recovered or repaid from previously committed AHP awards, must they be used to fund projects approved as alternates in a previous funding period?

A6. No. Recovered and repaid AHP subsidies must be returned to a Bank's AHP fund. A Bank may, but is not required to, fund alternate projects from recovered or repaid AHP funds.

*Board of Directors Approval (§ 960.6(b)(5)(ii)):*

Q7. May responsibility to approve or disapprove AHP applications be delegated by the board of directors of a Bank to a committee of the board?

A7. Yes. Such delegation should be done on an annual basis.

Modification of AHP Applications Prior to Project Completion (§ 960.7)

*Material Change (§ 960.7(a)):*

Q1. For purposes of modifications to AHP applications prior to project completion, what constitutes a change in a project that ''materially'' affects the facts under which the project's application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

Procedures for Funding (§ 960.8)

*Direct Subsidy Changes (§ 960.8(c)(3)(i)):*

Q1. When a Bank has approved a direct subsidy for an interest rate or principal write-down, is the Bank required to reduce the amount of the direct subsidy when interest rates decrease?

A1. Yes. The Bank must reduce the amount of AHP subsidy when interest rates have decreased from the time of the approval of the AHP application to the time of funding. However, the Bank does have the discretion to process a project modification under § 960.7 to cover additional amounts of subsidy required due to increased project costs or the loss or reduction of other funding sources. The modification could be approved by the Bank's staff, rather than the Bank's board of directors, if the amount of AHP subsidy required does not exceed the amount of the originally approved subsidy.

Modification of AHP Applications After Project Completion (§ 960.9)

*Material Change (§ 960.9):*

Q1. For purposes of modifications to AHP applications after project completion, what constitutes a change in a project that ''materially'' affects the facts under which the project's application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

*Financial Distress (§ 960.9(a)):*

Q2. May a completed project qualify for a modification if it is at risk of falling into financial distress?

A2. Yes. A project must provide sufficient information for the Bank to determine that it either is in financial distress or is at substantial risk of falling into financial distress. This section is intended to provide flexibility to modify the commitments made in the approved AHP application if those modifications will help to avert the potential financial distress. However, if a completed project needs additional AHP funds, it must compete for those additional funds.

Initial Monitoring Requirements (§ 960.10)

*Verification of Reasonable and Customary Costs (§ § 960.10(c)(1)(ii) and (c)(2)(ii)):*

Q1. What types of documentation may a Bank rely on in order to establish that a project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines?

A1. If a project is funded by other funding sources (such as Federal Low-Income Housing Tax Credits, FHA) that require a cost certification upon completion of construction or rehabilitation, the Bank may rely upon that cost certification to make its own determination whether the costs are reasonable and customary. If a cost certification is unavailable, the Bank shall review the final statement of sources and uses of funds to make that determination.

*Verification of Provision of Activities and Services (§ 960.10(c)(2)(i)):*

Q2. Is a site visit necessary to confirm that the services and activities committed to in an AHP rental housing application have been provided?

A2. A site visit is not necessary if the Bank has a certification and sufficient documentation to provide the Bank with reasonable assurance that the services and activities have been provided.

Long-Term Monitoring (§ 960.11)

*Reasonable Sampling Plan (§ 960.11(a)(3)(iii)(C)):*

Q1. What would be considered a reasonable sampling plan for the selection of projects to be monitored by a Bank each year?

A1. A Bank, working with its internal auditors, may develop a sampling methodology that is designed to assure that all projects are monitored according to the schedule established in § 960.11(a)(3)(iii) of the revised AHP regulation.

Remedial Action for Noncompliance (§ 960.12)

*Reasonable Collection Efforts (§ 960.12(a)(2)(ii)):*

Q1. What are reasonable collection efforts in the recovery of AHP subsidy by a member from the project sponsor or owner?

A1. Reasonable collection efforts will depend on the facts and circumstances of a given situation, including, but not limited to, the expected cost of recovery of the AHP subsidy and the amount of subsidy to be recovered. Reasonable

collection efforts may involve negotiation and pursuit of legal remedies against a project sponsor or owner, in addition to the enforcement of a member's rights under a mortgage or other lien on the project.

*Use of Recovered Interest for AHP-Eligible Projects (§ 960.12(c)(1)(i)):*

Q2. If AHP subsidy and interest are recovered by a Bank from a member, does the interest, as well as the AHP subsidy, have to be made available for other AHP-eligible projects under § 960.12(e)?

A2. Yes.

Other Issues

*Project Completion (§ § 960.1, 960.10 and 960.11):*

Q1. When is ''project completion'' to be determined for monitoring purposes?

A1. The date on which a certificate of occupancy is issued is one way to determine project completion. In areas that do not require certificates of occupancy, a Bank should identify in its monitoring procedures alternative ways that it will use to determine that a project is completed.

*Use of AHP Funds for Otherwise Eligible Costs (§ 960.5):*

Q2. May a Bank prohibit the use of AHP funds for certain types of costs that are otherwise eligible under the statute and revised AHP regulation?

A2. No.

*Retention and Monitoring Requirements Applicable to Projects Approved Prior to January 1, 1998 (§ § 960.1, 960.11, and 960.16):*

Q3. What are the retention and monitoring periods for projects approved prior to January 1, 1998?

A3. The retention and monitoring periods for projects approved prior to January 1, 1998, are 5 years from project completion for owner-occupied housing and 15 years from project completion for rental housing.

Dated: December 12, 1997.

**William W. Ginsberg,**

*Managing Director.*

[FR Doc. 97–33254 Filed 12–22–97; 8:45 am]

BILLING CODE 6725–01–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–283–AD; Amendment 39–10262; AD 97–26–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that currently requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection. This amendment expands the applicability of the existing AD. This action also provides for an optional terminating action, which, if accomplished, terminates the repetitive inspection requirement. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking of the lower lugs of the barrel of the MLG, which could lead to the collapse of the MLG.

**DATES:** Effective January 7, 1998.

The incorporation by reference of Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of January 7, 1998.

The incorporation by reference of Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 7, 1997 (62 FR 7665, February 20, 1997).

Comments for inclusion in the Rules Docket must be received on or before January 22, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** On February 10, 1997, the FAA issued AD 97–04–09, amendment 39–9933 (62 FR 7665, February 20, 1997), which is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. That AD requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG), for airplanes on which the barrel assembly has been overhauled or repaired. If any lower lug is found to be cracked, the AD further requires replacement of the MLG barrel assembly with new or serviceable parts, and a follow-on inspection. That action was prompted by reports indicating that, due to fatigue cracking in the lower lugs of the barrel, the MLG collapsed. The actions required by that AD are intended to detect and correct such fatigue cracking, which could lead to the collapse of the MLG.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that further investigation has revealed that the fatigue cracking is the result of a design flaw that may also affect new barrel assemblies that have never been overhauled or repaired. In addition, the DGAC advises that the interval for the repetitive inspections may be extended from 700 landings to 900 landings.

### Relevant Service Information

Messier-Dowty has issued Service Bulletin 631–32–133, dated February 24, 1997, which describes procedures to modify the lower lugs of the barrel of the MLG. The modification entails reconditioning the lower lugs and installing new bushings on the swinging lever. Accomplishment of this modification will prevent failure of the lugs due to fatigue cracking. Accomplishment of the modification

eliminates the need for the repetitive visual inspections. The DGAC classified this service bulletin as mandatory, and issued French airworthiness directive 96–294(B)R1, dated September 10, 1997, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 97–04–09 to continue to require repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection. This AD expands the applicability of the existing AD to include all Model ATR42–300 and -320 series airplanes, regardless of whether the MLG barrel assemblies installed on those airplanes are new, overhauled, or repaired. Additionally, this AD extends the repetitive inspection interval from 700 to 900 landings.

This AD also provides for optional modification of the lower lugs of the barrel of the MLG, which, if accomplished, constitutes terminating action for the repetitive inspection requirements of this AD. The modification is required to be accomplished in accordance with the service bulletin described previously.

**Interim Action**

This is considered to be interim action. The FAA is currently considering requiring the modification of the lower lugs of the barrel of the MLG. However, the planned compliance time for the installation of the modification is sufficiently long so that prior notice and time for public comment will be practicable.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–283–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9933 (62 FR 7665, February 20, 1997), and by adding a new airworthiness directive (AD), amendment 39-, to read as follows:

**97–26–19 Aerospatiale:** Amendment 39–10262. Docket 97–NM–283–AD. Supersedes AD 97–04–09, Amendment 39–9933.

*Applicability:* All Model ATR42–300 and ATR42–320 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the lower lugs of the barrel of the main landing gear (MLG), and consequent collapse of the MLG, accomplish the following:

(a) Perform an ultrasonic inspection to detect fatigue cracks of the lower lugs of the barrel of the MLG, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) Within 2 years after the last overhaul or repair of the lower lugs of the barrel of the MLG, or within 60 days after March 7, 1997 (the effective date of AD 97–04–09, amendment 39–9933), whichever occurs later; or

(2) Within 5 years after the installation of a new MLG barrel assembly, or within 60 days after the effective date of this AD, whichever occurs later.

(b) If, during any inspection required by this AD, no echo is detected, or if the echo is less than 20%, repeat the ultrasonic inspection thereafter at intervals not to exceed 900 landings.

(c) If, during any inspection required by this AD, the echo is greater than or equal to 20%, prior to further flight, replace the MLG barrel assembly with a new or serviceable MLG barrel assembly, in accordance with the service bulletin.

(1) If the damaged barrel assembly is replaced with an overhauled or repaired assembly, within 2 years after installation of that overhauled or repaired part, accomplish the actions specified in paragraph (a) of this AD.

(2) If the damaged barrel assembly is replaced with a new barrel assembly, within 5 years after installation of that new part, accomplish the actions specified in paragraph (a) of this AD.

(d) Modification of the lower lugs of the barrel of the MLG in accordance with Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, constitutes terminating action for the repetitive inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997; and Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

(1) The incorporation by reference of Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, was approved previously by the Director of the Federal Register as of March 7, 1997 (62 FR 7665, February 20, 1997).

(3) Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 96–294(B)R1, dated September 10, 1997.

(h) This amendment becomes effective on January 7, 1998.

Issued in Renton, Washington, on December 15, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–33509 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 500

**[Docket No. 95N–0417]**

## Carcinogenicity Testing of Compounds Used in Food-Producing Animals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations that set forth the requirements for the carcinogenicity testing of compounds used in food-producing animals. The amended regulations will eliminate the specific requirement that a sponsor must conduct oral, chronic, dose-response studies. This action is intended to allow FDA and sponsors greater flexibility in choosing the types of studies used for testing the carcinogenicity of compounds used in food-producing animals. The increased flexibility will make it easier and more economical for sponsors to complete required testing. These actions are part of FDA's continuing effort to achieve the objectives set forth in the President's ''National Performance Review'' initiative, which is intended to provide a comprehensive review of all rules in order to identify those that are obsolete and burdensome and to delete or revise them.

**EFFECTIVE DATE:** February 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Miller, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of June 20, 1996 (61 FR 31468), FDA proposed to revise the requirements for the carcinogenicity testing of compounds used in food-producing animals as set forth in § 500.80(b) (21 CFR 500.80(b)) of the new animal drug approval regulations. The second sentence of § 500.80(b) of the existing regulation states, ''The bioassays that a sponsor conducts must be oral, chronic, dose-response studies and must be designed to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response.'' The proposed rule would revise the existing language to eliminate the words ''must be oral, chronic, dose-response studies and'' * * *.

When the existing regulation was issued, a chronic study was the standard test for carcinogenicity. However, advances in models used to assess carcinogenicity have been made in recent years. For example, scientists now agree that a chronic study, as required under current regulations, may not measure the appropriate time point necessary to assess carcinogenicity for some compounds. Study designs other than a chronic study may result in a better evaluation of the compound in a number of cases.

FDA recognized these scientific advances by proposing to remove the requirement for oral, chronic, dose-response studies so that sponsors would have the option of using other study designs when assessing the carcinogenicity of compounds used for food-producing animals. This proposed change would allow FDA and sponsors greater flexibility in choosing types of studies for testing the carcinogenicity of compounds used in food-producing animals, making it more economical and

easier for sponsors. No comments were received on the proposed rule.

## II. Conclusion

Because the agency has determined that the underlying rationale in support of the amendment remains sound and because no comments or other information were received suggesting any modification, the revisions set forth in the proposed rule have not been modified in the final rule. Accordingly, the final rule deletes the specific requirement that required a sponsor to conduct oral, chronic, dose-response studies.

As stated in the proposal, this revision is consistent with the goals of the President's National Performance Review. The agency's actions are part of its continuing effort to achieve the objectives set forth in that initiative, which is intended to provide a comprehensive review of all rules in order to identify those that are obsolete and burdensome and to delete or revise them.

## III. Environmental Impact

FDA has carefully considered the potential environmental effects of this action and has determined that this action is categorically excluded under 21 CFR 25.30(h). This action revises the requirements for testing the carcinogenicity of compounds used for food-producing animals, but will not cause an increase in the existing level of use or cause a change in the intended uses of the product or its substitutes. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, and distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine the economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

This amendment to the regulations setting forth the requirements for the carcinogenicity testing of compounds used in food-producing animals will eliminate the specific requirement that a sponsor must conduct oral, chronic, dose-response studies, giving the agency and sponsors greater flexibility in choosing the types of studies used for testing the carcinogenicity of compounds used in food-producing animals. The resultant expanded flexibility will make it easier and less costly for sponsors to complete required testing.

FDA concludes that this final rule is consistent with the principles set forth in the Executive order and in these two statutes. In addition, the agency has determined that this rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Because the final rule does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year, a written statement and economic analysis are not required as prescribed under section 202(a) of the Unfunded Mandates Reform Act of 1995.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule will clarify FDA policy and simplify the process for submitting certain applications, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## V. Paperwork Reduction Act of 1995

FDA has determined that this rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## VI. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 12612 and has determined that this final rule does not warrant the preparation of a Federalism Assessment.

## List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 500 is amended as follows:

## PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

### § 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (b) in the second sentence by removing the phrase ''must be oral, chronic, dose-response studies and''.

Dated: December 17, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–33483 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation and Injectable Dosage Form New Animal Drugs; Imidocarb Dipropionate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for subcutaneous or intramuscular use of imidocarb dipropionate solution for dogs for treatment of babesiosis.

**EFFECTIVE DATE:** December 23, 1997

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1618.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, has filed NADA 141–071 Imizol® (imidocarb dipropionate) solution for subcutaneous or intramuscular use for treatment of dogs with clinical signs of babesiosis and/or demonstrated *Babesia* organisms in the blood. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of November 7, 1997, and the regulations are amended by adding new

21 CFR 522.1156 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act, this approval for use in nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning November 7, 1997, because the application contains substantial evidence of the effectiveness of the drug involved and any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. New § 522.1156 is added to read as follows:

### § 522.1156 Imidocarb dipropionate solution.

(a) *Specifications*. Each milliliter of injectable solution contains 120 milligrams of imidocarb.

(b) *Sponsor*. See No. 000061 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*. 6.6 milligrams imidocarb per kilogram (3 milligrams per pound) of body weight.

(ii) *Indications for use*. Treatment of clinical signs of babesiosis and/or demonstrated *Babesia* organisms in the blood.

(iii) *Limitations*. Use subcutaneously or intramuscularly. Not for intravenous use. Repeat the dose after 2 weeks for a total of two treatments. Imidocarb is a cholinesterase inhibitor. Do not use simultaneously with or a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: December 15, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–33486 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Salinomycin, Bacitracin Zinc, and Roxarsone

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

**SUPPLEMENTARY INFORMATION:** Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–209 and 200–215 that provide for combining approved salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler feeds containing salinomycin 40 to 60 grams per ton (g/t), bacitracin zinc 10 to 50 g/t, and roxarsone 34.1 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, increased rate of weight gain, and improved feed efficiency.

Alpharma Inc.'s ANADA 200–209 provides for using approved SACOX® (Hoechst-Roussel Vet's salinomycin ANADA 200–075), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds. Alpharma Inc.'s ANADA 200–215 provides for using approved BIO-COX® (Hoffmann-LaRoche, Inc.'s salinomycin NADA 128–686), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–209 is approved as a generic copy of Hoechst-Roussel Vet's ANADA 200–143. Alpharma Inc.'s ANADA 200–215 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 139–190. The ANADA's are approved as of December 23, 1997, and the regulations are amended in 21 CFR 558.550(b)(1)(ix)(*c*) to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

This approval is for use of three single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in ANADA's 200–209 and 200–215 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug

Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

**§ 558.550 [Amended]**

2. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(ix)(*c*) by removing ''No. 000004'' and adding in its place ''Nos. 000004 and 046573''.

Dated: October 30, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–33370 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 558

## New Animal Drugs For Use In Animal Feeds; Semduramicin and Roxarsone

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for using approved single ingredient Type A medicated articles to make combination drug Type C medicated broiler chicken feeds containing semduramicin and roxarsone used for prevention of coccidiosis.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–066, which provides for combining approved Type A medicated articles containing Aviax™ (semduramicin sodium) (22.7 grams per pound (g/lb.)) and 3-Nitro (roxarsone) (45.4, 90, and 227 g/lb.) to make combination drug Type C medicated broiler chicken feeds containing 22.7 grams per ton of semduramicin and 45.4 grams per ton of roxarsone. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria acervulina*, *E. brunetti*, *E. maxima*, *E. mivati/ E. mitis*, *E. necatrix*, and *E. tenella* including some field strains of *E. tenella* that are more susceptible to semduramicin combined with roxarsone than semduramicin alone. The NADA is approved as of December 23, 1997, and the regulations are amended by adding 21 CFR 558.555(b)(4) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act the act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years marketing exclusivity beginning December 23, 1997, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

This approval is for use of approved Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3 (b)(1)(ii). As provided in 21 CFR 558.4(b), an approved FDA form 1900 is required for making a Type B or Type C medicated feed as in this application. Under section 512(m) of the act, as amended by the Animal Drug Availability Act of 1996 (Pub L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of semduramicin and roxarsone Type A medicated articles to make Type C medicated feeds as provided in NADA 141–066 requires a feed mill license rather than an approved FDA Form 1900.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.555 is amended by adding paragraph (b)(4) to read as follows:

**§ 558.555 Semduramicin.**

* * * * *

(b) * * *

(4) *Amount.* Semduramicin 22.7 grams with roxarsone 45.4 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/E. mitis, E. necatrix*, and *E. tenella*, including some field strains of *E. tenella* that are more susceptible to semduramicin combined with roxarsone than semduramicin alone.

(ii) *Limitations.* Feed continuously as sole ration. Withdraw 5 days before slaughter. For broiler chickens only. Do not feed to laying hens. Use as sole source of organic arsenic. Roxarsone as provided by 046573, semduramicin as provided by 000069 in § 510.600(c) of this chapter.

Dated: December 15, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–33376 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Robenidine and Bacitracin Zinc

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved robenidine and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and increased rate of weight gain and improved feed efficiency.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–28), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

**SUPPLEMENTARY INFORMATION:** Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is the sponsor of ANADA 200–212 which provides for combining approved robenidine and bacitracin zinc Type A medicated articles to make Type C medicated broiler feeds containing robenidine hydrochloride 30 grams per ton (g/t) and bacitracin zinc 4 to 50 g/t for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*, and with bacitracin zinc 4 to 30 g/t, for increased rate of weight gain, and with bacitracin zinc 27 to 50 g/t, for improved feed efficiency.

Alpharma Inc.'s ANADA 200–212 is approved as a generic copy of Hoffmann-La Roche, Inc.'s NADA 96–933. The ANADA is approved as of December 23, 1997, and the regulations are amended in 21 CFR 558.515(d)(1)(vi)(*b*) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of two single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, robenidine, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of robenidine and bacitracin zinc Type A medicated articles to make Type C medicated feeds as provided in NADA 200–212 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

### § 558.515 [Amended]

2. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing ''000004 and 000061'' and adding in its place ''000004, 000061, and 046573''.

Dated: October 30, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–33489 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–01–F**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Amprolium Plus Ethopabate With Bacitracin Zinc and Roxarsone

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used as an aid in the prevention of coccidiosis and increased rate of weight gain in broiler chickens raised in floor pens.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

**SUPPLEMENTARY INFORMATION:** Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–217 that provides for combining approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler feeds. The Type C medicated feed containing amprolium 113.5 grams per ton (g/t) plus ethopabate 36.3 g/t with bacitracin zinc 5 to 35 g/t and roxarsone 34 g/t, is used as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima*, and *E. brunetti* is likely to occur, and for increased rate of weight gain in broiler chickens raised in floor pens.

Alpharma Inc.'s ANADA 200–217 provides for using approved AMPROL HI–E® (Merck's amprolium and ethopabate NADA 13–461), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–217 is approved as a generic copy of Swisher Feed Div.'s NADA 39–284. The ANADA is approved as of December 23, 1997, and the regulations are amended in 21

CFR 558.58(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of three Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of amprolium plus ethopabate, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in ANADA 200–217 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

### § 558.58 [Amended]

2. Section 558.58 *Amprolium and ethopabate* is amended in paragraph (d)(1)(iii) in the table in the entry for ''Bacitracin 5 to 35 plus roxarsone 34 (0.00375%)'' in the column ''Limitations'' by removing ''No. 000004'' and adding in its place ''Nos. 000004 and 046573''.

Dated: October 30, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–33488 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 25 and 602

**[TD 8743]**

**RIN 1545–AU12**

## Sale of Residence From Qualified Personal Residence Trust

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations permitting the reformation of a personal residence trust or a qualified personal residence trust in order to comply with the applicable requirements for such trusts. The final regulations also provide that the governing instruments of such trusts must prohibit the sale of a residence held in the trust to the grantor of the trust, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse.

**DATES:** The regulations are effective December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lane Damazo (202) 622–3090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1485. Responses to this collection of information are required in order to ensure the proper collection of the gift tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 3 hours to 3.25 hours, depending on individual circumstances, with an estimated average of 3.1 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

On April 16, 1996, the IRS published in the **Federal Register** a notice of proposed rulemaking (formerly PS–004–96) at 61 FR 16623. The IRS received written and oral comments on the proposed regulations and held a public hearing on July 24, 1996. This document adopts final regulations with respect to this notice of proposed rulemaking.

Comments with respect to § 25.2702–5(a)(2) indicated that the procedure permitting reformation of trust instruments will be helpful to taxpayers and practitioners. It was suggested that an additional reformation period be made available for trusts for which the gift tax return due date had passed before the regulations became effective. Accordingly, under the final regulations, the trustees of trusts created before January 1, 1997, are granted a 90-day period after these regulations become final in which to reform the trust.

Some of the comments concerning the amendments to § 25.2702–5(b) and (c) agreed that the restrictions in the proposed regulations on the sale of the personal residence after the termination of the grantor's retained interest in a personal residence trust or a qualified personal residence trust further the intent of Congress in enacting section 2702(a)(3)(A)(ii). Other comments stated that the restrictions were not supported by the statute. Treasury and the IRS continue to believe that these regulations are consistent with the intent of Congress and carry out the purpose of the personal residence exception to section 2702.

Other comments suggested that the final regulations should contain an exception permitting the sale of the residence to the grantor if the need arises. Treasury and the IRS believe, however, that a rule of this nature is not necessary, since a grantor may lease the residence after the retained term from a trust or individual to which the

residence passes after the expiration of the initial term. The right to lease the residence may be expressly set forth in the trust document creating the personal residence trust. If the residence is leased for its fair market value rental, the grantor will not retain the economic benefit of the property for purposes of section 2036(a), since the grantor will be paying adequate consideration for the use of the property. However, if the residence is leased from a trust that is a grantor trust with respect to the grantor, the IRS under some circumstances may contend that the grantor has retained the economic benefit of the property.

Commentators raised a concern that because the regulations prohibit the transfer of the residence to the grantor, or the grantor's spouse, etc., the trust could not provide for a reversionary interest or a testamentary power of disposition, taking effect at the grantor's death prior to the expiration of the trust term, nor could the trust provide for a remainder interest in fee for the grantor's spouse (e.g., remainder outright to spouse, or remainder to child, but if child predeceases termination of the trust, then to spouse.) The final regulations permit dispositions to the spouse.

Finally, commentators objected to the statement in the preamble to the proposed regulations to the effect that if the IRS finds a pre-effective date trust to be inconsistent with the purposes of section 2702, the IRS, by established legal doctrines, may treat the trust as non-qualifying. Treasury and the IRS wish to clarify that the IRS will apply these regulations only to post-effective date trusts. Nevertheless, Treasury and the IRS have the authority to apply established legal doctrines to disqualify a pre-effective date trust in cases where the statutory purpose has clearly been violated.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities, a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Dale Carlton, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 25*

Gift taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 25 is amended as follows:

## PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

**Paragraph 1.** The authority citation for part 25 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 25.2702–5 is amended as follows:

1. Paragraph (a) heading and text are redesignated as paragraph (a)(1) heading and text and paragraph (a)(2) is added.
2. In paragraph (b)(1), five sentences are added after the third sentence.
3. Paragraph (c)(5)(ii)(C) is revised.
4. Paragraph (c)(9) is added.

The additions and revisions read as follows:

**§ 25.2702–5 Personal residence trusts.**

(a) * * *

(2) *Modification of trust.* A trust that does not comply with one or more of the regulatory requirements under paragraph (b) or (c) of this section will, nonetheless, be treated as satisfying these requirements if the trust is modified, by judicial reformation (or nonjudicial reformation if effective under state law), to comply with the requirements. In the case of a trust created after December 31, 1996, the reformation must be commenced within 90 days after the due date (including extensions) for the filing of the gift tax return reporting the transfer of the residence under section 6075 and must be completed within a reasonable time after commencement. If the reformation is not completed by the due date (including extensions) for filing the gift tax return, the grantor or grantor's spouse must attach a statement to the gift tax return stating that the reformation has been commenced or will be commenced within the 90-day period. In the case of a trust created before January 1, 1997, the reformation must be commenced within 90 days after December 23, 1997 and must be completed within a reasonable time after commencement.

(b) * * * (1) * * * In addition, the trust does not meet the requirements of this section unless the governing instrument prohibits the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse, at any time after the original duration of the term interest during which the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse; however, a distribution (for no consideration) upon or after the expiration of the original duration of the term interest to another grantor trust of the grantor or the grantor's spouse pursuant to the express terms of the trust will not be considered a sale or transfer to the grantor or the grantor's spouse if such other grantor trust prohibits the sale or transfer of the property to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. In the event the grantor dies prior to the expiration of the original duration of the term interest, this paragraph (b)(1) does not apply to the distribution (for no consideration) of the residence to any person (including the grantor's estate) pursuant to the express terms of the trust or pursuant to the exercise of a power retained by the grantor under the terms of the trust. Further, this paragraph (b)(1) does not apply to any outright distribution (for no consideration) of the residence to the grantor's spouse after the expiration of the original duration of the term interest pursuant to the express terms of the trust. For purposes of this paragraph (b)(1), a *grantor trust* is a trust treated as owned in whole or in part by the grantor or the grantor's spouse pursuant to sections 671 through 678, and *control* is defined in § 25.2701–2(b)(5)(ii) and (iii). * * *

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) *Sale proceeds.* The governing instrument may permit the sale of the residence (except as set forth in paragraph (c)(9) of this section) and may permit the trust to hold proceeds from

the sale of the residence, in a separate account.

* * * * *

(9) *Sale of residence to grantor, grantor's spouse, or entity controlled by grantor or grantor's spouse.* The governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse during the retained term interest of the trust, or at any time after the retained term interest that the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse; however, a distribution (for no consideration) upon or after the expiration of the retained term interest to another grantor trust of the grantor or the grantor's spouse pursuant to the express terms of the trust will not be considered a sale or transfer to the grantor or the grantor's spouse if such other grantor trust prohibits the sale or transfer of the property to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. In the event the grantor dies prior to the expiration of the retained term interest, this paragraph (c)(9) does not apply to the distribution (for no consideration) of the residence to any person (including the grantor's estate) pursuant to the express terms of the trust or pursuant to the exercise of a power retained by the grantor under the terms of the trust. Further, this paragraph (c)(9) does not apply to an outright distribution (for no consideration) of the residence to the grantor's spouse after the expiration of the retained trust term pursuant to the express terms of the trust. For purposes of this paragraph (c)(9), a *grantor trust* is a trust treated as owned in whole or in part by the grantor or the grantor's spouse pursuant to sections 671 through 678, and *control* is defined in § 25.2701–2(b)(5)(ii) and (iii).

* * * * *

**Par. 3.** Section 25.2702–7 is amended as follows:

1. The first sentence is revised.

2. A sentence is added at the end of the section.

The revision and addition read as follows:

**§ 25.2702–7 Effective dates.**

Except as provided in this section, §§ 25.2702–1 through 25.2702–6 apply as of January 28, 1992. * * * The fourth through eighth sentences of § 25.2702–5(b)(1) and § 25.2702–5(c)(9) apply with respect to trusts created after May 16, 1996.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 5.** In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * | * |
| 25.2702–5 ..... | 1545–1485 |
| * * * * | * |

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

Approved: December 4, 1997.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97–33356 Filed 12–22–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR 199

**[DoD 6010.8–R]**

**RIN 0720–AA40**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Selected Reserve Dental Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the TRICARE Selected Reserve Dental Program (TSRDP) to provide dental care to members of the Selected Reserves of the Ready Reserve. The final rule details operation of the program.

**EFFECTIVE DATE:** This final rule is effective January 22, 1998.

**ADDRESSES:** Office of Health Services Financing, Department of Defense, Room 1B657, Pentagon, Washington, DC 20301–1200.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

**SUPPLEMENTARY INFORMATION:**

### I. Overview of the Final Rule

Implementation of the TRICARE Selected Reserve Dental Program (TSRDP) was directed by Congress in section 705 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, which amended title 10, United States Code, by adding section 1076b. This law directed the implementation of a dental program for members of the Selected Reserve of the Ready Reserve, providing for voluntary enrollment and premium sharing between DoD and the enrollee. Section 702 of the 1997 National Defense Authorization Act, Pub. L. 104–201 amended 10 U.S.C. 1076b, by revising the program's start date and also changing several operational requirements.

Included in the program are the 50 United States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. Enrollment in the TSRDP will be voluntary and accomplished via an enrollment application submitted to the contractor. Initial enrollment shall be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment. The costs of the program will be shared between the government and the enrollee. The premium payment shall be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

Dental coverage under the TSRDP will consist of basic dental care, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. Enrollees will be limited to an annual maximum of $1,000 of paid allowable charges per year. Minor administrative changes have been made in the benefits plan section in order to correct outdated codes.

Under this final rule, where possible, Reservists may make use of participating dental providers in their areas and may benefit from reduced out of pocket costs and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Dental claims under the TSRDP will be paid at the lower of the billed charges or the Usual, Customary and Reasonable (UCR) level, in which the customary rate is calculated at the 85th percentile or higher of billed charges.

TSRDP eligible beneficiaries will obtain information concerning the program and the enrollment process from the dental contractor. In the event an issue arises regarding the level of dental care received or the quality of care, all appeals and grievances should first be directed to the contractor for resolution. Only those issues that cannot be amicably resolved by the contractor should be forwarded to the TRICARE Support Office for review.

This final rule adopts the statutory preemption authority of 10 U.S.C. section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities.

As directed in the enacting legislation, the Department of Defense utilized a full and open competition to obtain a dental contractor to provide dental insurance coverage.

## II. Public Comments

The interim final rule was published on May 16, 1997 (62 FR 26939). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits.* The commenter recommended expanding the benefits under the program to include periodontics.

*Response.* Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations; periodontics was not included.

2. *Benefits.* We received a comment suggesting the addition of crowns as a benefit under the program.

*Response.* Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations. Crowns are not covered under the program as they are not considered to be a basic restorative service.

3. *Benefits.* Another comment we received pointed out that code 00130 had been changed to 00140.

*Response.* We concur with the comment and procedure code 00130 has been changed to 00140.

## III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

## List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 is amended as follows:

## PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Part 199 is amended by revising § 199.21 to read as follows:

### § 199.21 TRICARE Selected Reserve Dental Program (TSRDP).

(a) *Purpose.* The TSRDP is a premium based indemnity dental insurance coverage program that will be available to members of the Selected Reserve of the Ready Reserve. Dental coverage will be available only to members of the Selected Reserve, no family coverage will be offered. The TSRDP is authorized by 10 U.S.C. 1076b.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services, and emergency oral examinations.

(2) Premium costs for this coverage will be shared by the enrollee and the government.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TSRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TSRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) of this part are relevant to the administration of the TRICARE Selected Reserve Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TSRDP as they do to CHAMPUS and the Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.*(1) *Eligibility.* Enrollment in the TRICARE Selected Reserve Dental Program is open to members of the Selected Reserve of the Ready Reserve.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Selected Reserve Dental Program.

(3) *Election of coverage.* Following this notification, interested Reservists may elect to enroll. In order to obtain dental coverage, written election by eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Selected Reserve Dental Program is voluntary and will be accomplished by submission of an application to the TSRDP contractor. Initial enrollment shall be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Selected Reserve Dental Program coverage is terminated on the last day of the month in which the member is discharged, transferred to the Individual Ready Reserve, Standby Reserve, or Retired Reserve, or ordered to active duty for a period of more than 30 days.

(e) *Premium sharing.* The Government and the enrollee will share in the monthly premium cost.

(f) *Premium payments.* The enrollee will be responsible for a monthly

premium payment in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee being disenrolled from the TSRDP and subject to a lock-out period of 12 months. Following this period of time, eligible Reservists will be able to reenroll if they so choose.

(3) *Member's share of premiums.* The cost of the TSRDP monthly premium will be shared between the Government and the enrollee. Interested eligible Reservists may contact the dental contactor to obtain the enrollee premium cost. The member's share may not exceed $25 per month.

(g) *Plan benefits.* (1) The TSRDP will provide basic dental coverage, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. The following is the TSRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic: Comprehensive oral evaluation (00150), and Periodic oral evaluation (00120), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Bitewings-single film (00272); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Pulp Vitality Tests (00460).

(ii) Preventive: Prophylaxis-adult (limit-two per year) (01110); Tropical application of fluoride (excluding prophylaxis)-adult (01204).

(iii) Restorative: Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces; permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Pin retention-per tooth, in addition to restoration (02951).

(iv) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130); Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Surgical removal of residual tooth roots (cutting procedure) (07250).

(v) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(2) Codes listed in paragraph (g)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(h) *Maximum annual cap.* TSRDP enrollees will be subject to a maximum $1,000.00 of paid allowable charges per year.

(i) *Annual notification of rates.* TSRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(j) *Authorized providers.* The TSRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(k) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TSRDP contractor. For enrollees who do use this network, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TSRDP. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. The maximum payment allowable by the TSRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 85th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(l) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) of this part shall apply.

(m) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (m)(1) of this section, any State or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Selected Reserve Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Selected Reserve Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Selected Reserve Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (m)(2) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of section 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(n) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Selected Reserve Dental Program.

Dated: December 15, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–33108 Filed 12–22–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR 199

**[DoD 6010.8–R]**

**RIN 0720–AA44**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retiree Dental Program (TRDP)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the TRICARE Retiree Dental Program (TRDP), a premium based indemnity dental insurance coverage program, that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries.

**EFFECTIVE DATE:** This final rule is effective January 22, 1998.

**ADDRESSES:** Office of Health Services Financing Policy, Department of Defense, Room 1B657 Pentagon, Washington, DC 20301–1200.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

**SUPPLEMENTARY INFORMATION:**

### I. Overview of the Final Rule

Implementation of the TRICARE Retiree Dental Program (TRDP) was directed by Congress in section 703 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, which amended title 10, United States Code, by adding section 1076c. This final rule also incorporates the minor changes in the National Defense Authorization Act for Fiscal Year 1998 which expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration, and active duty survivors and their dependents. The law directs the implementation of a dental program for: (1) Members of the Uniformed Services who are entitled to retired pay, (2) Members of the Retired Reserve under the age of 60, (3) Eligible dependents of (1) or (2) who are covered by the enrollment of the member, and (4) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Included in the program are the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The final rule expands the coverage of the program to include all U.S. Territories. Enrollment in the program is voluntary and members enrolled in the dental plan will be responsible for paying the full cost of the premiums. Under the final rule, the initial enrollment period has been extended from 12 months to 24 months (similar to the Active Duty Dependents Dental Program) in order to reduce the risk of adverse selection. The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs). Dental coverage under the TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. Minor administrative changes have been made in the plan benefits section in order to correct outdated codes and to include codes that were inadvertently excluded from the list.

Under this rule, where possible, members entitled to retired pay and eligible family members and their dependents may make use of participating dental providers in their areas and may benefit from reduced out-of-pocket and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Under the final rule, the maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of the billed charges or the Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code). TRDP eligibles will obtain information concerning the program and the application process from the contractor.

This final rule adopts the statutory preemption authority of 10 U.S.C., section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities.

### II. Public Comments

The proposed rule was published on June 24, 1997 (62 FR 34032–34035). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits:* We received a comment that an error exists in the description of procedure code 00120, 00140, and 00150.

*Response:* We appreciate the comment and we have replaced ''examination'' with ''evaluation'' in the description of the procedure codes 00120, 00140, and 00150.

2. *Benefits:* The commenter pointed out an oversight in that two procedures, Amalgam-one surface, permanent (02140) and Amalgam (two-surface), permanent (02150) were not included in the benefits of the program.

*Response:* We concur with the comment and procedures codes 02140 and 02150 have been added under the restorative benefits under the program.

3. *Benefits:* Another comment we received pointed out that several periodontic (04261, 04262, 04268) codes are outdated and have been changed.

*Response:* We appreciate the comment. These periodontic codes have been changed in the final rule as follows: code 04261 has been replaced by Bone replacement graft-first site in quadrant (04263); code 04262 has been replaced by Bone replacement-each additional site in quadrant; code 04268 has been replaced by Guided tissue regeneration-resorbable barrier, per site, per tooth (04266) and Guided tissue

regeneration-nonresorbable barrier, per site, per tooth (includes membrane removal) (04267).

4. *Benefits:* We received a comment that the benefits need to be expanded to include prosthetic services.

*Response:* Under the law, 10 U.S.C. 1076c, the TRICARE Retiree Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency services; prosthetic services are not included.

5. *Maximum Annual Cap:* The commenter expressed concern about the $1,000 maximum annual cap and recommended a higher annual maximum benefit.

*Response:* As the government does not share in the cost of the premium, the maximum annual cap is necessary to ensure that the monthly premium is a reasonable/affordable amount for the enrollee. It is important to note that the maximum annual cap does not apply to all of the diagnostic services and some of the preventive services covered under the program.

6. *Benefit Payment:* The commenter pointed out a mistake in the Benefit payment section. The section states, ''For enrollees who do not use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP.''

*Response:* The commenter is correct and the sentence has been corrected to state, ''For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP.''

7. *Balance Billing:* A commenter asked if balance billing is limited to 115% of the CHAMPUS allowable charge for a service.

*Response:* As this is not a CHAMPUS program, DoD's statutory authority to limit balance billing to 115% of the CHAMPUS allowable charge does not apply. Non-network providers are not limited in the amount they may balance bill an enrollee.

## III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule will impose additional information collection requirements on the public, associated with beneficiary enrollment, under the Paperwork Reduction Act of 1995. OMB approval number 0720–0015 pending a development of a contractor-designed enrollment form which has now been accomplished. The form will be submitted to OMB concurrently with publication of this notice. The collection instrument serves as an application form for military members entitled to retired pay and eligible dependents to enroll in the TRICARE Retiree Dental Program. The application will allow the Department of Defense to identify enrollment applicants, evaluate their eligibility for the enrollment, and determine other health insurance coverage which an applicant may have.

*Affected Public:* Eligible family members and their dependents.

*Annual Burden Hours:* 71,640.

*Number of Respondents:* 286,570.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* Once, at time of initial application.

Respondents are retirees of the Uniformed Services entitled to retired pay and eligible family members and their dependents who are seeking enrollment in the TRICARE Retiree Dental Program. The enrollment application will allow the Department to collect the information necessary to properly identify the program's applicants and to determine their eligibility for enrollment in the TRICARE Retiree Dental Program. In completing and signing a TRICARE Retiree Dental Program enrollment form, applicants will acknowledge that they understand the benefits offered under the program and the rules they must follow to continue their participation in the program. Further, applicants will acknowledge that the premium will be withheld from retired pay when such pay is available. Initial enrollment will be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

## List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 amended as follows:

## PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Part 199 is amended by adding § 199.22 to read as follows:

### § 199.22 TRICARE Retiree Dental Program (TRDP).

(a) *Purpose.* The TRDP is a premium based indemnity dental insurance coverage program that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries, as specified in paragraph (d) of this section. The TRDP is authorized by 10 U.S.C. 1076c.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations, as specified in paragraph (f) of this section.

(2) Premium costs for this coverage will be paid by the enrollee.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Human Affairs) or designee, the TRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) of this part are relevant to the administration of the TRICARE Retiree Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TRDP as they do to CHAMPUS and the TRICARE Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the TRICARE Retiree Dental Program is open to:

(i) Members of the Uniformed Services who are entitled to retired pay;

(ii) Members of the Retired Reserve under the age of 60;

(iii) Eligible dependents of paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section who are covered by the enrollment of the member; and

(iv) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section; the

unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Retiree Dental Program.

(3) *Election of coverage.* Following this notification, interested members entitled to retired pay and eligible family members and their dependents may elect to enroll. In order to obtain dental coverage, written election by the eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor. Initial enrollment shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Retiree Dental Program coverage is terminated when the member's entitlement to retired pay is terminated, the member's status as a member of the Retired Reserve is terminated, a dependent child loses eligible child dependent status, or in the case of remarriage of the surviving spouse.

(6) *Continuation of dependents' enrollment upon death of enrollee.* Coverage of a dependent in the TRDP under an enrollment of a member or surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. Coverage may be terminated when the premiums paid are no longer sufficient to cover continuation of the enrollment.

(e) *Premium payments.* Persons enrolled in the dental plan will be responsible for paying the full cost of the premiums in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs) or designee.

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee's disenrollment from the TRDP and subject to a lock-out period of 12 months. Following this period of time, persons eligible will be able to reenroll if they so choose.

(3) *Member's payment of premiums.* The cost of the TRDP monthly premium will be paid by the enrollee. Interested beneficiaries may contact the dental contractor-insurer to obtain the enrollee premium cost.

(f) *Plan benefits.* (1) The TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. The following is the TRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic Periodic oral evaluation (00120); Comprehensive oral evaluation (limited to one exam per year in the same dental office) (00150), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Intraoral-occlusal film (00240); Bitewings-single film (00270); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Caries susceptibility tests, by report (00425); Pulp vitality tests (00460).

(ii) Preventive: Prophaylaxis-adult (limit-once per year) (01110); Prophylaxis-child (01120); Topical application of fluoride (excluding prophylaxis)-child (01203); Topical application of fluoride (excluding prophylaxis)-adult, by report, once per year (01204); Sealant-per tooth (01351); Space maintainer-fixed-unilateral (01510); Space maintainer-fixed-bilateral (01515); Space maintainer-removable-unilateral (01520); Space maintainer-removable-bilateral (01525); Recementation of space maintainer (01550).

(iii) Restorative: Amalgam-one surface, primary (02110); Amalgam-two surfaces, primary (02120); Amalgam-three surfaces, primary (02130); Amalgam-four or more surfaces, primary (02131); Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces, permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Recement inlay (02910); Recement crown (02920); Prefabricated stainless steel crown-primary tooth (02930); Prefabricated stainless crown-permanent tooth (02931); Prefabricated resin crown (02932); Prefabricated stainless steel crown with resin window (02933); Pin retention-per tooth, in addition to restoration (02951); Temporary crown (fractured tooth) (02970).

(iv) Endodontic: Pulp cap-indirect (excluding final restoration) (03120); Therapeutic pulpotomy (excluding final restoration) (03220); Pulpal therapy (resorbable filling)-anterior, primary tooth (excluded final restoration) (03230); Pulpal therapy (resorbable filling)-posterior, primary tooth (excluded final restoration) (03240); Anterior root canal (excluding final restoration) (03310); Bicuspid root canal (excluding final restoration) (03320); Molar root canal (excluding final restoration) (03330); Retreatment-anterior, by report (03346); Retreatment-bicuspid, by report (03347); Retreatment-molar, by report (03348); Apexification/recalcification-initial visit (apical closure/calcific repair of perforations, root resorption, etc.) (03351); Apexification/recalcification-interim medication replacement (apical closure/calcific repair of perforations, root resorption, etc.) (03352); Apexification/recalcification-final visit (includes completed root canal therapy-apical closure/calcific repair of perforations, root resorption, etc.) (03353); Apicoectomy/Periradicular surgery-anterior (03410); Apicoectomy/Periradicular surgery-bicuspid (first root) (03421); Apicoectomy/Periradicular surgery-molar (first root) (03425); Apicoectomy/Periradicular surgery (each additional root) (03426); Retrograde filling-per root (03430); Root amputation-per root (03450); Hemisection (including any root removal), not including root canal therapy (03920).

(v) Periodontic: Gingivectomy or gingivoplasty-per quadrant (04210); Gingivectomy or gingivoplasty-per tooth (04211); Gingival curettage, surgical, per quadrant, by report (04220); Gingival flap procedure, including root planing-per quadrant (04240); Mucogingival surgery-per quadrant (04250); Osseous surgery (including flap entry and closure)-per quadrant (04260); Bone replacement graft-single site (including flap entry and closure) (04263); Bone replacement graft-multiple sites (including flap entry and closure) (04264); Guided tissue regeneration—resorbable barrier (04266); Guided tissue regeneration—nonresorbable barrier (04267); Pedicle soft tissue graft procedure (04270); Free soft tissue graft procedure (including donor site) (04271); Periodontal scaling and root planing-per quadrant (04341); Periodontal maintenance procedures (following active therapy) (04910);

Unscheduled dressing change (by someone other than treating dentist) (04920).

(vi) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130) Surgical removal or erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Removal of impacted tooth-soft tissue (07220); Removal of impacted tooth-partially bony (07230); Removal of impacted tooth-completely bony (07240); Surgical removal of residual tooth roots (cutting procudure) (07250); Oral antral fistula closure (07260); Tooth reimplantation and/or stabilization of accidentially evulsed or displaced tooth and/or alveolus (07270); Surgical exposure of impacted or unerupted tooth to aid eruption (07281); Biopsy of oral tissue-hard (07285); Biopsy of oral tissue-soft (07286); Surgical repositioning of teeth (074290); Alveoloplasty in conjunction with extractions-per quadrant (07310); Suture of recent small wounds up to 5 cm (07910); Complicated suture-up to 5 cm (07911); Complicated suture-greater than 5 cm (07912); Excision of pericoronal gingiva (07971).

(vii) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(viii) Drugs: Therapeutic drug injection, by report (09610); Other drugs and/or medications, by report (09630).

(ix) Postsurgical: Treatment of complications (post-surgical) unusual circumstances, by report (09930).

(2) Codes listed in paragraph (f)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(g) *Maximum annual cap.* TRDP enrollees will be subject to a maximum cap of $1,000.00 of paid allowable charges per enrollee per year.

(h) *Annual notification of rates.* TRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(i) *Authorized providers.* The TRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(j) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TRDP contractor. For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP. Enrollees using non-network providers may balance billed amounts in excess of allowable charges. The maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(k) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) of this part shall apply.

(l) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (l)(1) of this section, any State or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Retiree Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Retiree Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Retiree Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (l)(2) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of section 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(m) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Retiree Dental Program.

Dated: December 15, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–33110 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD01–97–120]**

**RIN 2115–AE46**

## Special Local Regulation: Fireworks Displays Within the First Coast Guard District

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500 yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

**EFFECTIVE DATE:** The regulations in 33 CFR 100.114 are effective from one hour

before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below in **SUPPLEMENTARY INFORMATION.** The events are listed chronologically by month with their corresponding number listed in the special local regulation, 33 CFR 100.114.

**ADDRESSES:** Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Guy A. McArdle, Office of Search and Rescue branch, First Coast Guard District at (617) 223–8460.

**SUPPLEMENTARY INFORMATION:** This document implements the special local regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500 yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

**Table 1—Fireworks Displays**

*December*

1. First Night Fireworks

Date: December 31, 1997.
Time: 12:00 a.m. (midnight) to 12:15 a.m.
Location: Off Waterfront Park, between Commercial and Long Wharf's.
Lat: 42°21.7N, Long: 071°02.8″W (NAD 1983).

2. First Night Martha's Vineyard

Date: December 31, 1997.
Time: 9:30 p.m. to 11:00 p.m.
Location: Vineyard Haven Harbor.
Lat: 41–27N, Long: 070–35W (NAD 1983).

4. City of New Bedford First Night

Date: December 31, 1997.
Time: 12:00 a.m. (midnight) to 12: 30 a.m.
Location: New Bedford Harbor, vicinity of state pier.
Lat: 41–38N, Long: 070–55W (NAD 1983).

Dated: December 2, 1997.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 97–33464 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–14–M

## POSTAL SERVICE

## 39 CFR Part 255

## Access of Handicapped Persons to Postal Services, Programs, Facilities, and Employment

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The purpose of these changes is to clarify Postal Service regulations concerning the filing and processing of complaints of discrimination by handicapped persons in obtaining access to postal programs and services. References to Postal Service offices and publications have also been updated.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rodger Carter, Coordinator, ABC Program, Facilities HQ, 4301 Wilson Blvd., Suite 300, Arlington VA 22203–1861; telephone (703) 526–2867.

**SUPPLEMENTARY INFORMATION:** The Postal Service is amending its regulations in order to clarify procedures to ensure, in accordance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, that its programs and services are provided in a non-discriminatory fashion to handicapped persons. All changes are designed to make the regulations easier for both postal customers and employees to understand and follow.

The Postal Service has not previously amended its Part 255 regulations. References to particular postal offices and publications, may of which were no longer in existence or had been restructured, have been revised. Certain other provisions were revised or deleted because they were redundant, such as repetitive provisions concerning responding to a complaint, or were duplicative of other postal regulations. For instance, Part 255 had contained postal regulations implementing the Rehabilitation Act in Sections 255.1 and 255.2, and also a few provisions concerning the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, in Section 255.3. Since ABA requirements and compliance are set forth comprehensively in other regulations, see *e.g.* 49 FR 31528 (August 7, 1984) and Postal Service handbook RE–4, Standards for Facility Accessibility by the Physically Handicapped, they have been removed from Part 255. Similarly, provisions have been deleted that relate to actions taken for employees in accordance with procedures under Section 501 of the Rehabilitation Act.

Accordingly, part 255 now contains postal regulations that implement Section 504 of the Rehabilitation Act only, which regulations are set forth in a clearer and more comprehensive fashion. Part 255.1 sets forth procedural provisions, including how to file a complaint and time-frames for responses by postal officials. Corrective actions that may be appropriate are described in Parts 255.2 and 255.3, which concern special service arrangements and discretionary retrofits to facilities, respectively. Part 255.4, which relates to internal agency procedures and levels of authority, remains unchanged.

The Postal Service expects that these amendments will make its Rehabilitation Act procedures easier to use, so that the agency can provide timely and appropriate responses to requests and complaints thereunder.

**List of Subjects in 39 CFR Part 255**

Administrative practice and procedure, Individuals with disabilities.

Accordingly, for the reasons set forth in the preamble, 39 CFR Part 255 is amended as follows;

## PART 225—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

**Authority:** 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794.

2. Section 255.1(c)(1) is amended by revising the first sentence to read as follows: ''Handicapped customers who believe that they have been discriminated against in the provision of postal services or programs should file a written complaint with their local postmasters or other local postal official responsible for such services or programs.''

3. Section 255.1(c)(2) is removed, and paragraphs (c)(3) through (6) are redesignated as paragraphs (c)(2) through (5), respectively.

4. In § 255.1, newly redesignated paragraph (c)(2) is revised to read as follows:

**§ 255.1 Discrimination against handicapped person prohibited.**

* * * * *

(c) * * *

(2) *Resolution.* A local official receiving a complaint by a handicapped customer about access to postal programs and services must process it in accordance with this part. The official should review the complaint, and consult with the district office as needed, to determine if corrective action is necessary. Corrective action can include a special arrangement for postal services under § 255.2, or a discretionary retrofit to the facility

under § 255.3. The decision about which corrective action to take, if any, should be made within the time limits set forth in paragraph (c)(3), or sooner if possible.

* * * * *

5. In § 255.1, newly redesignated paragraph (c)(3) is amended by revising the third sentence to read as follows: ''Whenever it appears that a complaint cannot be resolved within 60 days of its receipt, a written report and explanation must be submitted to the appropriate district manager.''

6. In § 255.1, newly redesignated paragraph (c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) *Automatic review.* If the local official proposes to deny a request or complaint by a handicapped customer for a special arrangement or the alteration of a facility, the proposed decision shall be submitted to the appropriate district manager. The customer must be notified in writing of the approved decision.

* * * * *

7. In § 255.1, newly redesignated paragraph (c)(5) is revised to read as follows:

* * * * *

(c) * * *

(5) *Exhaustion of administrative remedies.* If a customer service complaint filed under this paragraph (c) is not resolved within 60 days of its receipt, the customer may seek relief in any other appropriate forum, including the right to appeal to the Customer Advocate in accordance with Postal Operations Manual 166. The Postal Service may continue to consider the complaint after the expiration of the 60 day period.

* * * * *

8. Section 255.2(a)(1) is amended by revising ''Domestic Mail Manual 155.262'' to read ''Postal Operations Manual 631.42''.

9. Section 255.2(a)(2)(i) is revised to read as follows:

**§ 255.2 Special arrangements for postal services.**

(a) * * *

(2) * * *

(i) *Stamps by mail, phone, or on consignment.* See Postal Operations Manual 151–153.

* * * * *

10. Section 255.2(a)(2)(ii) is amended by revising ''Domestic Mail Manual 156.41'' to read ''Postal Operations Manual 652–653''.

11. Section 255.2(a)(2)(iii) is amended by revising ''Postal Operations Manual 154'' to read ''Postal Operations Manual 145.6''.

12. Section 255.2(a)(2)(iv) is revised to read as follows:

(a) * * *

(2) * * *

(iv) *Postage-free mailing for certain mailings.* See Domestic Mail Manual E040, Administrative Support Manual 274.24, and International Mail Manual 250.

* * * * *

13. Section 255.2(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) *Response to Customer Request or Complaint for a Special Arrangement.* A local official receiving a request or complaint seeking a special arrangement must provide the customers with any such arrangement as may be required by postal regulations. If no special arrangements are required, the postal official, in consultation with the district office as needed, may provide a special arrangement or take any action that will accommodate the customer, including, among others, performing a discretionary retrofit, providing curb or home delivery, or directing the customer to a nearby accessible facility, if he or she determines the arrangement or action would be reasonable, practical, and consistent with the economical and proper operation of the particular program or activity.

* * * * *

14. Section 255.2(c) is removed.

15. Section 255.3(a)(1) is to read as follows:

**§ 255.3 Access to postal facilities.**

(a) * * *

(1) *Legal and policy requirements.* Where the design standards of the Architectural Barriers Act (ABA) of 1968 do not apply, the Postal Service may perform a retrofit to the facility for a handicapped customer in accordance with this part.

* * * * *

16. Section 255.3(a)(2) introductory text is amended by removing ''also'' and revising the phrase ''the Barrier Act's'' to read ''ABA'' in the first sentence, and by removing the second sentence.

17. Sections 255.3(a), (a)(4), and (a)(5) are removed.

18. Section 255.3(b)(2) is revised to read:

* * * * *

(b) * * *

(2) *Response to customer request or complaint for an alteration to a facility.* If a local official determines, in consultation with the district office as needed, that modification to meet ABA standards is not required, discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local official should determine if the customer can be provided a special arrangement under § 255.2.

* * *

19. Section 255.3(c) is removed.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 97–33478 Filed 12–22–97; 8:45 am]

BILLING CODE 7710–12–M

## POSTAL SERVICE

### 39 CFR Part 954

### Rules of Practice in Proceedings Relative to the Denial, Suspension, or Revocation of Second-Class Mail Privileges

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is making several technical amendments to reflect new terminology adopted in connection with Periodicals, formerly second-class mail, and to update titles and make other technical and grammatical changes.

**EFFECTIVE DATE:** December 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Diane M. Mego, (202) 268–5438.

**SUPPLEMENTARY INFORMATION:** As a part of Classification Reform proceedings, second-class mail was renamed Periodicals. As of July 1, 1996, second-class mail privileges have been referred to as Periodicals mailing privileges (Domestic Mail Manual § E211.1.1). Administrative decisions determined under that section now refer to Periodicals mail privileges. Procedural rules for the denial, suspension, and revocation of these privileges are found at 39 CFR 954.

Amendment to part 954 is needed to substitute references to Periodicals mail privileges for second-class mail privileges. Additional amendment is needed to reflect the revision and renumbering of the Domestic Mail Manual on July 1, 1993 (54 Fed. Reg. 34887 (1993)), and to update and correct the titles of the Docket Clerk, Director, Law Librarian, and Law Library to the Recorder, authorized official, Librarian, and Library, respectively. Also, several grammatical amendments reflecting gender neutrality are being made.

These revisions are changes in agency rules of procedure before the Judicial Officer and do not substantially affect

any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

**List of Subjects in 39 CFR Part 954**

Administrative practice and procedure, Periodicals, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 954 as specifically set forth below:

## PART 954—[AMENDED]

1. The authority citation for part 954 continues to read as follows:

**Authority:** 39 U.S.C. 204, 401.

2. The title of part 954 is amended by substituting ''Periodicals'' for ''Second-Class.''

**§ 954.2 [Amended]**

3. Section 954.2 is amended by substituting ''Periodicals'' for ''second-class.''

**§ 954.3 [Amended]**

4. Section 954.3 is amended by substituting ''Periodicals'' for ''second-class.''

**§ 954.5 [Amended]**

5. Section 954.5 is amended by substituting ''Periodicals'' for ''second-class.''

6. Section 954.5 is amended by substituting ''§ E213 of the Domestic Mail Manual'' for ''Part 132 of this chapter.''

7. Section 954.5 is amended by adding ''or she'' after ''he'' and ''or her'' after ''his'' wherever it appears.

**§ 954.6 [Amended]**

8. Section 954.6 is amended by substituting ''Periodicals'' for ''second-class.''

9. Section 954.6 is amended by adding ''or she'' after ''he.''

**§ 954.8 [Amended]**

10. Section 954.8 is amended by substituting ''Recorder'' for ''Docket Clerk'' wherever it appears.

11. Section 954.8(b) is amended by substituting ''Periodicals'' for ''second-class'' wherever it appears.

12. Section 954.8(b) is amended by adding ''or her'' after ''his.''

13. Section 954.8(e) is amended by adding ''or she'' after ''he'' wherever it appears.

**§ 954.10 [Amended]**

14. Section 954.10 is amended by adding ''or her'' after ''his'' and ''or she'' after ''he.''

**§ 954.12 [Amended]**

15. Section 954.12 is amended by adding ''or her'' after ''his'' and ''or she'' after ''he'' wherever it appears.

**§ 954.13 [Amended]**

16. Section 954.13(a) is amended by substituting ''authorized official'' for ''Director.''

17. Section 954.13(a) is amended by adding ''or her'' after ''his'' and ''him.''

18. Section 954.13(c) is amended by adding ''or she'' after ''he.''

**§ 954.14 [Amended]**

19. Section 954.14(b)(6) is amended by adding ''or she'' after ''he.''

20. Section 954.14(b)(8) is amended by adding ''or her'' after ''his.''

**§ 954.16 [Amended]**

21. Section 954.16(d)(1) is amended by substituting ''the authorized official's'' for ''Director's.''

**§ 954.17 [Amended]**

22. Section 954.17(b) is amended by adding ''or her'' after ''his'' and ''or she'' after ''he'' wherever it appears.

**§ 954.18 [Amended]**

23. Section 954.18(a) is amended by substituting ''Recorder'' for ''Docket Clerk'' wherever it appears.

**§ 954.19 [Amended]**

24. Section 954.19(a) is amended by adding ''or she'' after ''he.''

**§ 954.25 [Amended]**

25. Section 954.25 is amended by substituting ''Librarian'' for ''Law Librarian.''

26. Section 954.25 is amended by substituting ''Library'' for ''Law Library.''

27. Section 954.25 is amended by substituting ''Recorder'' for ''Docket Clerk.''

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 97–33480 Filed 12–22–97; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 179–0057 FRL–5934–8]**

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 4, 1997. The revisions concern rules from the Bay Area Air Quality District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to incorporate BAAQMD rules with updated definitions which include a revised definition of volatile organic compound (VOC) into the federally approved SIP.

**EFFECTIVE DATE:** This action is effective on January 22, 1998.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rules being approved into the California SIP include the following BAAQMD rules: Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8–20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; Rule 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; Rule 8–50, Polyester Resin Operations.

## II. Background

On August 4,1997 in 62 FR 41905, EPA proposed to approve the following BAAQMD rules into the California SIP: Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8–20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; Rule 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; Rule 8–50, Polyester Resin Operations. These rules were adopted by BAAQMD on December 20, 1995 and were submitted by the CARB to EPA on July 23, 1996.

EPA has evaluated the revised definitions in the above rules for consistency with federal and state definitions. This action will result in a more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone procursors. A detailed discussion of the rule provisions and evaluations has been provided in 62 FR 41865 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated April 10, 1997).

## III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 41865. EPA received one comment from the BAAQMD on the direct final rule. BAAQMD commented that clarification was needed in EPA's approval to reflect the exact compounds being exempted. EPA stated that the district rules' definition of VOC and exempt compounds are consistent with EPA's definitions because the rules were revised to exempt three compounds (acetone, parachlorobenzotrifluoride (PCBTF) and cyclic, branched, or linear, completely methylated siloxanes (VMS)) exempted by EPA. By the time these rules were submitted to EPA by CARB on July 23, 1996, EPA had made additional revisions to the definition of VOC and exempt compounds. BAAQMD want the final rule to reflect that the submitted rules to not exempt compounds exempted by EPA after December 20, 1995 (the date the rules were adopted). EPA has evaluated BAAQMD's comment and agrees that clarification is needed. The comment does not effect the EPA's approval of Rules 8–4, 8–11, 8–12, 8–13, 8–14, 8–19, 8–20, 8–23, 8–29, 8–31, 8–32, 8–38, 8–43, 8–45, and 8–50 into the SIP, it clarifies the compounds exempted. Therefore, EPA is now approving the submitted BAAQMD rules.

## IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally-approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' as defined by 5 U.S.C. 804(2).

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 2, 1997.

**Harry Seraydarian,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (239)(i)(E)(*2*) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(*2*) Rule 8–4, Rule 8–11, Rule 8–12, Rule 8–13, Rule 8–14, Rule 8–19, Rule 8–20, Rule 8–23, Rule 8–29, Rule 8–31, Rule 8–32, Rule 8–38, Rule 8–43, Rule 8–45, Rule 8–50 amended on December 20, 1995.

* * * * *

[FR Doc. 97–33324 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IL158a; FRL–5900–3]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this action, USEPA approves a State Implementation Plan (SIP) revision, submitted by the State of Illinois on April 25, 1997, for the general conformity rules. The general conformity SIP revision enables the State of Illinois to implement the Federal general conformity requirements in the nonattainment and maintenance areas at the State level. General Conformity assures that Federal actions conform to the State plan to attain and maintain the public health based air quality standards. In this action, USEPA is approving the Illinois General Conformity rules through a ''direct final'' rulemaking; the rationale for this ''direct final'' approval and other information is set forth below.

**DATES:** This action is effective February 23, 1998 unless adverse written comments are received by January 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision are available for inspection at the following address: (It is recommended that you telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–8656.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Conformity provisions first appeared in the Clean Air Act (CAA) amendments of 1977 (Public Law 95–95). Although these provisions did not define the term conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment areas.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in Section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires USEPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called ''general conformity'' rules. The actions under Title 23 U.S.C. or the Federal Transit Act (referred to as transportation conformity) will be addressed in a separate **Federal Register** notice. The USEPA published the final general conformity rules in the November 30, 1993, **Federal Register** and codified them at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the USEPA not later than November 30, 1994.

### II. Evaluation of State Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the CAA, as amended November 15, 1990, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision to the USEPA on April 25, 1997. The

submittal was found complete in a letter dated July 8, 1997. In its submittal, the State adopted rules (35 Illinois Administrative Code Part 255) which repeat verbatim the USEPA general conformity rule (40 CFR part 93, subpart B) with only minor clarifications. General conformity is required for all areas which are designated nonattainment or maintenance for any of the six National Ambient Air Quality Standard (NAAQS) criteria pollutants (ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, and particulate matter).

The IEPA held a public hearing on the general conformity submittal on October 25, 1996. Several comments were received on the rules and responded to by the IEPA.

## III. USEPA Action

The USEPA is approving the general conformity SIP revision for the State of Illinois. The USEPA has evaluated this SIP revision and has determined that the State has fully adopted regulations which meet the provisions of the Federal general conformity rules in accordance with 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this rule by the IEPA.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse written comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical written comments be filed. This action will be effective on February 23, 1998 unless, by January 22, 1998, adverse or critical written comments on the approval are received.

If USEPA receives adverse written comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public written comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If the effective date is delayed, timely notice will be published in the **Federal Register**.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

### *B. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, General conformity, Intergovernmental relations.

Dated: December 5, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator, Region V.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C 7401 et seq.

## Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(137) to read as follows:

### § 52.720 Identification of plan.

* * * * *

(c) * * *

(137) Approval—On April 25, 1997, the Illinois Environmental Protection Agency submitted a revision to the State Implementation Plan for general conformity rules. The general conformity rules enable the State of Illinois to implement the general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR Part 93, Subpart B—Determining Conformity of General

Federal Actions to State or Federal Implementation Plans.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 2: Environmental Protection Agency, Part 255 General Conformity: Criteria and Procedures. Adopted at 21 Ill. Reg. effective March 6, 1997.

[FR Doc. 97–33322 Filed 12–22–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA179–0052a] [FRL–5911–2]**

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on a revision to the California State Implementation Plan (SIP). The revision concerns Rule 1115 from the Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate Rule 1115 into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from metal parts and products coating operations. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on February 23, 1998, unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

**SUPPLEMENTARY INFORMATION:**

#### I. Applicability

The rule being approved into the California SIP is Rule 1115, Metal Parts and Products Coating Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996.

#### II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Mojave Desert portion of San Bernardino County, California (see 43 FR 8964, 40 CFR 81.305). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Mojave Desert portion of San Bernardino County is classified as ''severe''.[2] Therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1996, including the rule being acted on in this document. This document addresses EPA's direct-final action for MDAQMD Rule 1115, Metal Parts and Products Coating Operations. MDAQMD revised and adopted Rule 1115 on April 22, 1996. This submitted rule was found to be complete on October 30, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

MDAQMD Rule 1115 is a prohibitory rule governing the use and application of coating compounds containing photochemically reactive volatile organic compounds (VOCs) in the metal parts and products coating industry. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the MDAQMD effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

Formerly, on January 5, 1993, EPA proposed a limited approval/disapproval of MDAQMD's Rule 1115 (see 58 FR 322). This version of Rule 1115 was adopted by MDAQMD on March 2, 1992 and submitted by the CARB to EPA on June 19, 1992 as a revision to the California SIP. EPA has not taken final action on the January 5, 1993 proposal.

In response to EPA's January 5, 1993 proposal, the MDAQMD Board amended Rule 1115 and adopted these revisions

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Mojave Desert retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

on April 22, 1996. The CARB submitted the revised rule to EPA on July 23, 1996. This revision of Rule 1115 is the subject of today's approval action. EPA's evaluation and final action for this rule follows below.

## III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provided for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, ''Control of Volatile Organic Emissions from Exist Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Currently, there is no version of MDAQMD Rule 1115, Miscellaneous Metal Parts and Products Coating Operations, in the SIP. The submitted rule includes the following provisions: rule applicability; definitions, coating requirements; add-on emission control device requirements; exceptions from the rule; administrative requirements; monitoring and records; and test methods for determining compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 1115, Miscellaneous Metal Parts and Products Coating Operations, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. For further information, EPA's review of the April 22, 1996 version of Rule 1115 can be found in the ''Technical Support Document'' for today's rulemaking action.

As discussed earlier, in response to EPA's January 5, 1993 proposed limited approval/disapproval action, the MDAQMD Board amended Rule 1115 on April 22, 1996. The MDAQMD Board responded to EPA's comments within the proposed limited approval/disapproval and subsequent correspondence by correcting the listed rule deficiencies and providing a rule consistent with EPA regulations and policy. Therefore, given today's approval action, EPA does not intend to finalize the January 5, 1993 proposal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 23, 1998, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 23, 1998.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to

the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 27, 1997.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(A)(*2*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(239) * * *

(i) * * *

(A) * * *

(*2*) Rule 1115, adopted on March 2, 1992 and amended on April 22, 1996.

* * * * *

[FR Doc. 97–33321 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region II Docket No. NY10–2–174; FRL–5934–7]**

### Approval and Promulgation of Implementation Plans; Revisions to the New York State Implementation Plan for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, ''General Provisions,'' Part 201, ''Permits and Certificates,'' Part 228, ''Surface Coating Processes,'' Part 229, ''Petroleum and Volatile Organic Liquid Storage,'' Part 233, ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234, ''Graphic Arts.'' The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to all of New York State which is part of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

**EFFECTIVE DATE:** This rule is effective January 22, 1998.

**ADDRESSES:** Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:** On May 24, 1995, the Environmental Protection Agency (EPA) published in the **Federal Register** (60 FR 27464) a Notice of Proposed Rulemaking (NPR) concerning a revision to the New York State Implementation Plan (SIP) for ozone. The State requested the SIP be revised to incorporate revised regulations contained in Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200, ''General Provisions,'' Part 201 ''Permits and Certificates,'' Part 228, ''Surface Coating Processes,'' Part 229 ''Petroleum and Volatile Organic Liquid Storage and Transfer,'' Part 233, ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234, ''Graphic Arts.'' These regulations were adopted on February 26, 1993, and became effective on April 4, 1993.

**Final Action**

The revisions and the rationale for EPA's action were explained in EPA's May 24, 1995 NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR. No comments were received on EPA's proposed action. EPA is approving Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Clean Air Act.

It should be noted that sections 228.3(e), 229.3(g) and (h), 233.3(h), and 234.3(f) permit the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied reasonably available control technology. These provisions also require that any lesser degree of control must be submitted to the EPA as a revision to the SIP. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision.

Sections 229.4(a)(4), 233.4(b)(4) and 234.4(b)(1)(iv) permits the Commissioner and EPA to accept

alternative analytical methods for determining compliance with emission limits, contained in these Parts, when approved test methods are not applicable. These provisions require that any alternate test method must be approved in advance by the NYSDEC and EPA before they can be used.

Section 228.5(c) permits the Commissioner to accept alternative analytical methods for determining compliance with emission limits, contained in part 228, when approved test methods are not applicable. In such a case, EPA reserves its right to demonstrate the applicability of Test Method 24 (40 CFR part 60, appendix A).

It should be noted that Part 201 contains the requirements for the State's permit to construct and certificate to operate program. These provisions are not intended to meet the Title V Permits Program required by the Clean Air Act. New York has made a subsequent submittal to EPA which addresses the Title V Permits Program. Also, Part 201 contains a previously adopted odor provision which EPA will act on in a separate rulemaking.

**SIP Deficiencies**

The revisions to Parts 200 and 228 addressed several deficiencies which EPA identified in a May 26, 1988 letter to former Governor Cuomo and a January 30, 1991 letter to the NYSDEC Commissioner which found the SIP substantially inadequate to attain the ozone and carbon monoxide standards. With EPA's approval of these regulations, EPA is making a finding that New York has now corrected all but one deficiency which involves the test methods for determining capture efficiency for VOC emission control systems.

EPA originally provided guidance on such test methods, but states and industry inquired whether less costly and less time consuming alternatives were possible. EPA began a study of capture efficiency test methods and issued a moratorium on the need to correct any deficient regulations until the study was complete. On February 7, 1995, EPA announced the completion of this study, ''Guidelines For Determining Capture Efficiency,'' and required any states with this deficiency to correct their VOC regulations. On March 20, 1995, EPA notified New York that such corrections were now required. Because the regulations which are the subject of this **Federal Register** notice were proposed and adopted prior to March 20, 1995, EPA is approving the regulations which are the subject of this rulemaking. However, submission and approval of the capture efficiency test methods is still necessary for full approval of New York's SIP. New York is in the process of developing the necessary revisions to address capture efficiency test methods. The next time the State submits a SIP revision containing these regulations, EPA will require that they contain these test methods.

As of February 27, 1995, EPA's moratorium on the use of such methods ended and the methods in the February 27, 1995 guidance document are considered by EPA to be accurate and credible. Should a situation arise which involves capture efficiency, EPA will require confirmation of capture efficiency values using the appropriate test method.

**Conclusion**

EPA is approving Parts 200, 201, 228, 229, 233 and 234 as part of the SIP. Sections 228.3(e)(1), 229.3(g)(1), 233.3(h)(1), and 234.3(f)(1) allow for alternative requirements provided they are submitted to the EPA for approval as a source specific SIP revision. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision. Alternate analytical methods for determining compliance with surface coating emission limits pursuant to Section 228.5(c) are approved based on NYSDEC's agreement that, for purposes of being federally enforceable, New York will submit these alternate test methods to EPA for approval.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Administrative Requirements**

*Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller

General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 1997.

**Jeanne M. Fox,**

*Regional Administrator, Region II.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(93) to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) * * *

* * * * *

(93) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from petroleum and volatile organic compound storage and transfer, surface coating and graphic arts sources, dated March 8, 1993 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Amendments to Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200 ''General Provisions,'' Part 201 ''Permits and Certificates,'' Part 228 ''Surface Coating Processes,'' and Part 229 ''Petroleum and Volatile Organic Liquid Storage and Transfer,'' Part 233 ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234 ''Graphic Arts,'' effective April 4, 1993.

3. Section 52.1679 is amended by revising the six entries for Parts 200, 201, 228, 229, 233 and 234 to the table in numerical order to read as follows:

**§ 52.1679 EPA—approved New York State regulations.**

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|---|---|---|---|
| Part 200, General Provisions. | 4/4/93 | December 23, 1997, FR 67006. | Redesignation of nonattainment areas to attainment areas (200.1(mm)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. |
| Part 201, Permits and Certificates. | 4/4/93 | December 23, 1997, FR 67006. | |
| * | * | * | * * |
| Part 228, Surface Coating Processes: | | | |
| 228.1–228.10 ..... | 4/4/93 | December 23, 1997, FR 67006. | SIP revisions submitted in accordance with Section 228.3(e)(1) are effective only if approved by EPA. |
| Part 229, Petroleum and Volatile Organic Liquid Storage and Transfer. | 4/4/93 | December 23, 1997, FR 67006. | SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA. |
| * | * | * | * * |
| Part 233, Pharmaceutical and Cosmetic Processes. | 4/4/93 | December 23, 1997, FR 67006. | SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA. |
| Part 234, Graphic Arts .... | 4/4/93 | December 23, 1997, FR 67006. | SIP revisions submitted in accordance with Section 234.3(f)(1) are effective only if approved by EPA. |

[FR Doc. 97–33317 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CO–44–1–6866(a); FRL–5630–1]**

## Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State implementation plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS). The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

**DATES:** This action is effective on February 23, 1998 unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments must be submitted to Jeff Houk at the Region VIII address. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, Third Floor, South Terrace, Denver, Colorado 80202–2405; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

**FOR FURTHER INFORMATION CONTACT:** Jeff Houk, State Program Support Unit, EPA Region VIII, telephone (303) 312–6446.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Colorado Springs and Fort Collins, Colorado areas were designated nonattainment for CO and classified as moderate under Sections 107(d)(4)(A) and 186(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.306 (Colorado Springs Area and Fort Collins Area). The air quality planning requirements for moderate CO nonattainment areas are set out in Subparts 1 and 3 of Part D, Title I of the Act.[2] The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate CO nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Moderate CO areas with a design value of less than or equal to 12.7 parts per million (including Colorado Springs and Fort Collins) are not required by the Act to submit a SIP demonstrating attainment of the NAAQS. Rather, these areas are required to submit certain SIP elements, including an oxygenated fuels program, an emissions inventory, and contingency measures.

Those States containing moderate CO nonattainment areas such as Colorado Springs and Fort Collins were required to submit contingency measures by November 15, 1993 (see 57 FR 13532). These measures must become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the CO National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline (December 31, 1995). See Section 172(c)(9) and 57 FR 13532–13533.

## II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Colorado submitted revisions to the SIP for Colorado Springs and Fort Collins with a letter dated February 18, 1994. The revisions address contingency measures for CO. EPA is now approving the Colorado Springs and Fort Collins contingency measures as adopted by the State of Colorado on November 12, 1993 and submitted to EPA by Colorado's Governor on February 18, 1994.

### *A. Analysis of State Submission*

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Colorado, after providing adequate notice, held a public hearing on November 12, 1993 to address the Colorado Springs and Fort Collins contingency measures. Following the public hearing, the Colorado Springs and Fort Collins contingency measures were adopted by the State.

The contingency measures were submitted as a proposed revision to the SIP by the Governor with a letter dated February 18, 1994. The submittal was received on February 22, 1994, and was deemed complete by operation of law on August 22, 1994.

### *B. Contingency Measures*

The Clean Air Act requires States containing certain CO nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13532–13533. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing moderate CO nonattainment areas with a design value of less than or equal to 12.7 parts per million (ppm) shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13532.) (''Not Classified'' areas, that is, areas that had a design value less than the 9.0 ppm CO NAAQS at the time of designation, are not required to submit contingency measures.)

EPA guidance (''Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plans,'' EPA–452/R–92–003, July 1992) recommends that implementation of the contingency measures provide vehicle miles travelled (VMT) reductions or emission reductions sufficient to counteract the effect of one year's growth in VMT. However, the Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. EPA believes that contingency measures must provide for continued progress toward the attainment goal. This would be the minimum requirement and is consistent with the statutory scheme.

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State, or the [EPA] Administrator.'' EPA has interpreted this requirement (in

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 3 contains provisions specifically applicable to CO nonattainment areas. At times, Subpart 1 and Subpart 3 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's document and supporting information.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

the General Preamble at 57 FR 13533) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to affect full implementation of CO contingency measures to occur within 12 months after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The CO contingency measures for Colorado Springs and Fort Collins were developed by the Air Pollution Control Division (APCD) of the Colorado Department of Health (CDH), now the Colorado Department of Public Health and Environment (CDPHE). After a public hearing on November 12, 1993, the Colorado Air Quality Control Commission (AQCC) adopted the measures. The Governor submitted the contingency measures to EPA with a letter dated February 18, 1994.

Within 12 months of notification by EPA that either the Colorado Springs or Fort Collins CO nonattainment area has failed to attain the CO NAAQS by December 31, 1995, the APCD will implement the contingency measure, the Enhanced Vehicle Inspection and Maintenance (I/M) Program, codified in Colorado Regulation No. 11. The enhanced I/M program produces substantial additional emission reductions over the ''Basic'' I/M program currently in operation in the Colorado Springs and Fort Collins areas. The enhanced I/M program is currently in operation in the Denver/Boulder and Longmont CO nonattainment areas. EPA conditionally approved the Colorado Enhanced I/M program in the **Federal Register** on November 8, 1994 (59 FR 55584).

The program would apply in those portions of El Paso County (Colorado Springs) and Larimar County (Fort Collins) in which the Basic I/M program is currently in operation. These areas, known as the ''AIR Program Area'' within each County, are described in the authorizing legislation for the enhanced I/M program.

*C. Effectiveness of the Contingency Measures*

In Colorado Springs, emissions from one year's growth in VMT were estimated by the Pikes Peak Area Council of Governments (the Metropolitan Planning Organization for the area) at 14.4 tons per day. Reductions from the enhanced I/M program were estimated at approximately 34 tons per day. EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Colorado Springs.

In Fort Collins, APCD estimates that mobile source emissions would be lowered by 13.95% with the implementation of the enhanced I/M program. Since the estimated one year growth of VMT is 3% in Fort Collins, and the CO emissions inventory for this area reports that approximately 80% of the CO emissions in the nonattainment area are attributable to mobile sources, the reductions from the enhanced I/M program provide more than a sufficient amount of reduction as a contingency measure. Therefore, EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Fort Collins.

*D. Enforceability Issues*

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see Section 110(a)(2)(C)].

The specific measures contained in the Colorado Springs and Fort Collins contingency plan are addressed above in Section II.B. Regulation No. 11, which implements this contingency measure, is legally enforceable by APCD. There are civil penalties, which increase with each violation, for noncompliance with the regulation, as well as a prohibition on the registration of any vehicle which has not complied with the enhanced I/M program and substantial penalties for nonregistration of vehicles. The enforceability of Regulation No. 11 is addressed in more detail in EPA's November 8, 1994 **Federal Register** document conditionally approving the program. The State of Colorado has a program that will ensure that the contingency measures are adequately enforced. EPA believes that the State's existing air enforcement program will be adequate.

**III. Final Action**

EPA is approving Colorado's SIP revisions, submitted by the Governor with a letter dated February 18, 1994, for the Colorado Springs and Fort Collins, Colorado nonattainment areas. This submittal addressed CO contingency measure plans that were due on November 15, 1993. These plans involve the implementation of the Colorado Enhanced Vehicle I/M Program in the Colorado Springs and Fort Collins CO nonattainment areas in the event that EPA makes a determination that either area has failed to attain the CO NAAQS by the statutory attainment date of December 31, 1995. A copy of the State's SIP revision is available at the address listed in the **ADDRESSES** section above.

The EPA is publishing the action on the contingency measure submittal without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the contingency measure SIP revision should adverse or critical comments be filed. Thus, under the procedures established in the May 10, 1994 **Federal Register**, today's direct final action will be effective February 23, 1998 unless, by January 22, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 23, 1998.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the CAA. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor vehicle pollution, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: September 28, 1995.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

**Editorial note:** This document was received at the Office of the Federal Register December 17, 1997.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(71) to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c)* * *

(71) The Governor of Colorado submitted carbon monoxide contingency measures for Colorado Springs and Fort Collins with a letter dated February 18, 1994. This submittal was intended to satisfy the requirements of section 172(c)(9) of the Clean Air Act for contingency measures which were due on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Areas regulation, 5 CCR 1001–20, Section VI, City of Fort Collins Nonattainment Area, and Section VII, Colorado Springs Nonattainment Area, adopted on November 12, 1993, effective on December 30, 1993.

* * * * *

[FR Doc. 97–33320 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 58

**[AD–FRL–5939–8]**

**RIN 2060–AF71**

### Withdrawal of Direct Final Rule for Ambient Air Quality Surveillance for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule for Ambient Air Quality Surveillance for Lead. EPA published the direct final rule on November 5, 1997 at 62 FR 59813. As stated in that **Federal Register** document, if adverse or critical comments were received by December 5, 1997, the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse

comments on that final rule. EPA will address the comments received in a subsequent final action in the near future. EPA will not institute a second comment period on this document.

**DATES:** The direct final rule published at 62 FR 59813 is withdrawn as of December 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Brenda Millar, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919)541–4036, e-mail: millar.brenda@emai.epa.gov.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule located in the final rules section of the November 5, 1997 **Federal Register** and in the informational document located in the proposed rule section of the November 5, 1997 **Federal Register**.

### List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Ambient air quality monitoring network.

Dated: December 18, 1997.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 97–33452 Filed 12–18–97; 4:30 pm]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 940246–4137; I.D. 121697D]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Snowy Grouper; Commercial Trip Limit Reduction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit for snowy grouper in the exclusive economic zone (EEZ) off the southern Atlantic states to 300 lb (136 kg). This trip limit reduction is necessary to protect the snowy grouper resource.

**DATES:** Effective 12:01 a.m., local time, December 20, 1997, through December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for snowy grouper, one of the species in the snapper-grouper complex, is 344,508 lb (156,266 kg), gutted weight, each fishing year. The fishing year is January 1 through December 31. In accordance with 50 CFR 622.44(c)(2), a commercial trip limit of 2,500 lb (1,134 kg) applies until the quota is reached. When the quota is reached, or is projected to be reached, NMFS is required to reduce the commercial trip limit to 300 lb (136 kg), through the end of the fishing year.

Based on current statistics, NMFS has projected that the commercial quota for snowy grouper will be reached on December 19, 1997. Accordingly, the commercial trip limit for snowy grouper in or from the EEZ off the southern Atlantic states is reduced to 300 lb (136 kg) effective 12:01 a.m., local time, December 20, 1997, through December 31, 1997. During this period, no more than 300 lb (136 kg), round weight or gutted weight, of snowy grouper may be possessed on board or landed, purchased, or sold from a vessel that has a valid commercial permit for snapper-grouper per day. The possession of a valid commercial permit notwithstanding, the bag and possession limits apply when a vessel is operating as a charter vessel or headboat.

### Classification

This action is taken under 50 CFR 622.43(a) and 622.44(c) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 16, 1997.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–33385 Filed 12–18–97; 11:43 am]

**BILLING CODE 3510–22–F**

# Proposed Rules

Federal Register
Vol. 62, No. 246
Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020

**[Docket No. 97N–0477]**

**RIN 0910–ZA09**

## Medical Devices; Refurbishers, Rebuilders, Reconditioners, Servicers, and ''As Is'' Remarketers of Medical Devices; Review and Revision of Compliance Policy Guides and Regulatory Requirements; Request for Comments and Information

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to review and, as necessary, to revise or to amend its compliance policy guides and regulatory requirements relating to the remarketing of used medical devices and the persons who refurbish, recondition, rebuild, service, or remarket such devices. The agency is considering these actions because it believes evolving industry practices warrant reevaluation of current policy and the application of certain regulatory requirements in order to ensure that particular remarketed devices meet suitable performance requirements for their intended uses, and are as safe as the originally marketed finished device. FDA is soliciting comments, proposals for alternative regulatory approaches, and information on these issues. In a future issue of the **Federal Register**, FDA will announce an open meeting of the Good Manufacturing Practices (GMP) Advisory Committee concerning these matters.

**DATES:** Written comments by March 23, 1998.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Medical device marketing has always involved a certain amount of remarketing of used medical devices that were refurbished, rebuilt, serviced, reconditioned, cosmetically enhanced or marketed ''as is'' for further use. Under regulations issued by FDA for medical devices, including radiation emitting electronic products, at parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020 (21 CFR parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020), most such processing of used devices falls within the definition of manufacturing or is identified among activities performed by manufacturers, thereby subjecting remarketers to the same regulatory requirements as other manufacturers. These requirements include: labeling (part 801); medical device reporting (parts 803 and 804); corrections and removals (part 806); registration, listing and premarket notification (part 807); physician, patient notification and recall remedies (part 810); current good manufacturing practices (part 820); device tracking (part 821); and for electronic devices, electronic product reports (part 1002); and electronic product performance standards (part 1020).

Remarketing used devices may consist of activities that significantly change the finished device's performance or safety specifications, or intended use. These types of activities constitute ''remanufacturing'' as defined in the Quality System regulation (QS) (also known as the current good manufacturing practice (CGMP) regulation) (§ 820.3(w)). Remarketing used devices can also consist of activities that do not significantly change the finished device's performance or safety specifications, or intended use. These activities may consist of refurbishing, reconditioning, rebuilding, servicing the device, or merely selling the device ''as is.'' Current guidance, discussed further in section II of this document, describes whom FDA considers a reconditioner or rebuilder of a device. FDA has not issued regulations or guidance defining what activities are considered ''servicing'' or ''refurbishing.''

### II. Current Compliance Policy Guides Relating to Remarketers Who Are Considered Reconditioners, Rebuilders, and X-Ray Tube Reloaders

FDA has issued two compliance policy guides (CPG's) that relate to persons who remarket devices, but do not change the finished device's intended use. On November 1, 1981, FDA issued CPG 7133.20, which set forth the agency's position that ''adequate enforcement can be effectively accomplished'' by considering reloaders of x-ray tube housing assemblies to be assemblers of x-ray components if a reloaded x-ray tube housing assembly is the only finished device produced by the firms. This CPG further stated reloaders must retain complaint files, injury reports, and failure analysis records that must be available for inspection by the agency. FDA has exercised its enforcement discretion with respect to establishment registration and device listing requirements under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) for such firms.

On December 29, 1987, FDA issued CPG 7124.28 to address the application of certain requirements of the act and its implementing regulations to firms that acquire and process used devices for remarketing purposes. The agency identified the reconditioner/rebuilder of a medical device as ''a person or firm that acquires ownership of used medical devices and restores and/or refurbishes these (devices) to the device manufacturer's original or current specifications, or new specifications, for purposes of resale or commercial distribution.''

In CPG 7124.28, the agency stated that reconditioners/rebuilders of medical devices must comply with: The registration, and premarket notification requirements of the act (section 510) and implementing regulatory requirements (part 807); the labeling requirements of the act (section 502) and applicable regulatory requirements (part 801); the CGMP requirements of the act (section 520) and implementing regulatory requirements (part 820); and, the medical device reporting

requirements of the act (section 519) and implementing regulatory requirements (part 803). FDA intends to revise this CPG based on FDA's experience in this area and the comments received to this advance notice of proposed rulemaking (ANPR).

### III. Reasons for Review

In the **Federal Register** of October 7, 1996 (61 FR 52602), FDA issued a revised QS regulation which set forth CGMP requirements for medical devices (part 820). The preamble of the October 7, 1996, QS regulation acknowledged that:

> [CPG] 7124.28 contains the agency's policy regarding the provisions of the act and regulations with which persons who recondition or rebuild used devices are expected to comply. This CPG is in the process of being revised in light of FDA's experience in this area. FDA is not including the terms ''servicer'' or ''refurbisher,'' as they relate to entities outside the control of the original equipment manufacturer, in this [QS] final regulation, even though it believes that persons who perform such functions meet the definition of manufacturer.
> (61 FR 52602 at 52610)

FDA further advised that, ''[b]ecause of a number of competitive and other issues, including sharply divided views among members the GMP Advisory Committee at the September 1995 meeting, FDA has elected to address application of the GMP requirements to persons who perform servicing and refurbishing functions outside the control of the original manufacturer in a separate rulemaking later this year'' *Id*.

In addition to the concerns raised in the QS/CGMP rulemaking process relating to the applicability of CGMP's to remarketers, issues have been raised relating to the applicability of other regulatory requirements to remarketers. In response to these concerns, FDA has attempted to learn more about the concerns relating to remarketers. In 1994, FDA began discussing issues related to remarketers with the International Association of Medical Equipment Remarketers (IAMER). Beginning in 1994 and continuing through IAMER's April 10 to 12, 1997, meeting, representatives of the FDA's Center for Devices and Radiological Health have attended, and on occasion made presentations at, various meetings and conferences of IAMER membership firms.

Through exchanges at these meetings and correspondence with IAMER's Regulatory Affairs Committee, FDA has preliminarily noted that rising costs and health care expenses have apparently contributed to expanded sales of a growing variety of remarketed devices. Much of this activity is occurring outside the control of the original equipment manufacturer. FDA also tentatively concluded that a significant number of firms that have been refurbishing or otherwise remarketing electronic radiation emitting medical devices are unaware of FDA's compliance policy, and the applicable regulations and statutory requirements, such as the filing of initial and other reports under parts 1002 and 1020, with respect to their activities.

### IV. Proposed Definitions of Remarketing Activities That Constitute Refurbishing, ''As Is'' Remarketing, and Servicing

As stated in section II of this document, FDA has issued guidance, which is being considered for revision, that describes who FDA considers to be ''reconditioners'' and ''rebuilders.'' FDA has not issued regulations or guidance defining what persons are considered to be ''refurbishers,'' ''as is'' remarketers, or ''servicers.'' These terms have been difficult to define and at times have been used interchangeably. Compliance Policy Guide 7124.28 states only that FDA considers rebuilders or reconditioners to be persons who have acquired ownership of the devices and conduct refurbishing activities.

FDA is soliciting comments on whether to propose definitions, as described in the following three paragraphs, of types of remarketers, either in guidance or in a regulation, that may or may not relate to the ownership of the devices. Accordingly, FDA is soliciting comments on whether it should propose by regulation, or issue by guidance, the following definitions or a variation of these definitions to describe remarketing activities that do not significantly change a finished device's performance or safety specifications or intended use.

*Refurbishers*: persons who, for the purpose of resale or redistribution, visually inspect, functionally test and service devices, as may be required, to demonstrate that the device is in good repair and performing all the functions for which it is designed. The device may or may not be cosmetically enhanced. Preventive maintenance procedures may or may not be performed. Refurbishers do not significantly change a finished device's performance or safety specifications, or intended use.

*''As Is'' Remarketers*: for the purpose of resale or redistribution, the operational condition of the device is unknown. The extent to which the device meets the operational requirements must be determined by the user prior to patient exposure. The device may or may not be cosmetically enhanced. ''As Is'' remarketers do not change a finished device's performance or safety specifications, or intended use.

*Servicers*: persons who repair a device to return it to the manufacturer's fitness for use specifications, and perform the manufacturer's recommended scheduled preventive maintenance. Servicers do not significantly change a finished device's performance or safety specifications, or intended use.

FDA believes that these definitions encompass activities that do not significantly change the finished device's performance or safety specifications or intended use.

### V. Revisions Under Consideration

In light of evolving industry practices, and the concerns raised by the GMP Advisory Committee, industry, and others described previously, FDA is reevaluating the application of various regulatory controls to remarketers who do not significantly change a finished device's performance or safety specifications, or intended use, and is reassessing the degree of regulatory control necessary to ensure the protection of the public health. FDA intends to evaluate the current regulatory approach with respect to remarketers who are refurbishers, ''as is'' remarketers, and servicers, as defined in this document, and is soliciting comments on whether FDA should retain the current regulatory approach, or whether the agency should use alternative approaches to regulate these types of remarketers.

The agency believes that any regulatory approach for these types of remarketers should, at a minimum, include compliance with requirements concerning: Representations of quality under section 501(c) of the act (21 U.S.C. 351(c)); false or misleading labeling under section 502 of the act (21 U.S.C. 352), and part 801; notification and recall provisions under section 518 of the act (21 U.S.C. 360h), and part 810; corrections and removal reporting requirements under section 519(f) of the act (21 U.S.C. 360i(f)), and part 806; medical device reporting under section 519(a) of the act, and parts 803 and 804; tracking requirements under section 519(e) of the act, and part 821; and radiological health requirements under sections 532 through 542 of the act (21 U.S.C. 360ii through 360ss), including records and initial reporting requirements under part 1002, and standard requirements under part 1020.

Accordingly, FDA requests information on the following issues relating to remarketing activities that do not significantly change the finished

device's performance or safety specifications or intended uses.

(1) Has FDA appropriately defined the terms, ''refurbisher,'' ''as is'' remarketers, and ''servicers''? If not, what changes to these definitions should be made?

(2) What evidence exists regarding actual problems with the safety and/or performance of remarketed devices that are the result of the remarketing? Specific examples should be submitted.

(3) What is the appropriate level of regulatory controls that should be applied to persons who remarket devices?

(4) Should refurbishers, ''as is'' remarketers, and servicers be subject to the same or different regulatory requirements?

In addition, FDA is specifically considering whether to propose rulemaking regarding modified registration, listing, and CGMP requirements for these types of remarketers, or whether to make some or all of the these three controls voluntary. For example, the agency could propose that refurbishers and/or servicers be required to register and list with FDA (part 807), and comply with certain CGMP requirements, such as quality system requirements (part 820, subpart B), production and process controls (part 820, subpart G), acceptance activities (part 820, subpart H), corrective and preventive action (part 820, subpart J), labeling and packaging control ( part 820, subpart K), and records (part 820, subpart M). Alternatively, the agency could propose that refurbishers and/or servicers be required to register and list, but comply only with CGMP requirements for maintaining complaint files (§ 820.198(a)) and conducting failure analyses (§ 820.198(b) and (c)). In making comments relating to the regulatory approaches, comments should indicate whether their comments relate to refurbishers, ''as is'' remarketers, and/or servicers, as described in section IV of this document. Other regulatory approaches may be proposed by the agency or by the comments which, if implemented, would require the issuance of new guidance documents, or consist of changes to current regulations or changes to existing guidances CPG 7124.28 and CPG 7133.20.

## VI. Comments

The agency will consider any comments submitted in response to this ANPR, or comments relating to the reevaluation of agency guidances, including CPG's 7124.28 and 7133.20. FDA will consider the record of any public meetings or any advisory committee meetings, along with comments, proposals and other information received, when deciding whether to issue or revise agency guidance or modify any existing regulations.

Interested persons may, on or before March 23, 1998 submit to Dockets Management Branch (address above) written comments regarding this ANPR. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA does not anticipate granting requests for extension to this 90-day comment period.

Dated: December 3, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33372 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 52

**[PS–158–86]**

**RIN 1545–AJ23**

## Petroleum Tax Imposed on Natural Gasoline

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a proposed regulation relating to the petroleum tax imposed on natural gasoline. The withdrawal affects persons that produce natural gasoline at fractionation facilities or receive natural gasoline produced at those facilities.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, (202) 622–3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4611 imposed a tax on crude oil (including natural gasoline) received at a United States refinery. On April 26, 1993, a notice of proposed rulemaking (PS–158–86) relating to this tax was published in the **Federal Register** (58 FR 21963). The proposed regulation treats any facility that produces natural gasoline by fractionation or similar operation as a United States refinery. Under this rule, tax would be imposed on natural gasoline when it is produced from natural gas liquids at a fractionation facility.

Since the publication of the proposed regulation, the tax imposed by section 4611 has expired. Because tax is not currently imposed under section 4611, the proposed regulation is being withdrawn. For purposes of section 4611 prior to its expiration, the IRS will follow the result in *Enron Gas Processing Co.* v. *United States,* 96–1 USTC ¶ 70,058 (S.D. Tex. 1996), in all cases involving substantially similar facts. In *Enron,* the U.S. District Court for the Southern District of Texas held that fractionation facilities are not United States refineries.

### List of Subjects in 26 CFR Part 52

Chemicals, Excise taxes, Reporting and recordkeeping requirements.

### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on April 26, 1993 (58 FR 21963) is withdrawn.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 97–33250 Filed 12–22–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## 30 CFR Parts 56, 57, 62, 70, and 71

**RIN AA53**

## Health Standards for Occupational Noise Exposure in Coal, Metal and Nonmetal Mines

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Proposed rule; availability; request for comments.

**SUMMARY:** On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from the National Institute for Occupational Safety and Health (NIOSH) entitled ''Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners.'' The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on

the report. The Agency has determined that it is in the public interest to allow interested parties an opportunity to comment. MSHA is reopening the rulemaking record for limited comment on the report.

**DATES:** Submit written comments on the report on or before January 22, 1998.

**ADDRESSES:** Comments on the report may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to: psilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, MSHA, Office of Standards, Regulations, and Variances, 703–235–1910.

**SUPPLEMENTARY INFORMATION:** On December 17, 1996, MSHA published a proposed rule in the **Federal Register** (61 FR 66348) revising its health standards for occupational noise exposure in coal and metal and nonmetal mines.

To confirm the magnitude of the risks of NIHL among miners, MSHA examined evidence of reported hearing loss among miners from a variety of sources—audiometric data bases tracking hearing acuity among coal miners, individual commenter data, hearing loss data reported to MSHA, and workers' compensation data. MSHA also asked NIOSH to examine a body of audiometric data which tracked hearing acuity among coal miners and one which tracked hearing acuity among metal and nonmetal miners. NIOSH completed its analysis of the audiometric data on coal miners and issued a report to MSHA entitled ''Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners,'' (Franks, 1996) which is a part of the existing rulemaking record.

On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from the National Institute for Occupational Safety and Health (NIOSH) entitled ''Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners.'' The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on the report. MSHA has evaluated these requests and believes that a 30 day comment period will provide sufficient time for all interested parties to review the report and comment. All interested members of the mining community are encouraged to submit comments prior to January 22, 1998.

Dated: December 17, 1997.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 97–33447 Filed 12–22–97; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 913

**[SPATS No. IL 089–FOR]**

## Illinois Regulatory Program Amendment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a request and additional explanatory information for its reconsideration of two regulations disapproved in a previously proposed amendment to the Illinois regulatory program (hereinafter referred to as the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The disapproved regulations concern the determination of revegetation success for non-contiguous surface disturbance areas less than or equal to four acres. The additional explanatory information is intended to clarify the regulations by specifying procedures and evaluation criteria that would be used in the implementation of the regulations.

**DATES:** Written comments must be received by 4:00 p.m., e.s.t., January 7, 1998.

**ADDRESSES:** Written comments should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office at the address listed below.

Copies of the Illinois program, the proposed amendment, the additional explanatory information, and all written comments received in response to this document will be available for public review at the at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana, 46204–1521, Telephone: (317) 226–6700. Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois, 62701–1787, Telephone: (217) 782–4970.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**



### I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16 and at its own initiative. OSM announced receipt of the proposed amendment in the February 27, 1995, **Federal Register** (60 FR 19522), and invited public comment on its adequacy. The public comment period ended March 29, 1995. A public hearing was requested, and it was held on March 24, 1995, as scheduled. OSM identified concerns relating to the proposed amendment, and notified Illinois of these concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively). By letter

dated November 1, 1995 (Administrative Record No. IL–1663), Illinois responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed amendment. OSM reopened the public comment period in the December 5, 1995, **Federal Register** (60 FR 62229). The public comment period closed on January 4, 1996. OSM approved the proposed amendment with certain exceptions and additional requirements on May 29, 1996 (61 FR 26801).

## II. Discussion of the Proposed Amendment

By letter dated August 5, 1997 (Administrative Record No. IL–1670), Illinois requested that OSM reconsider its May 29, 1996, disapproval of the following regulatory language at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F).

> Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

In its letter of August 5, 1997, Illinois provided explanatory information to clarify the regulatory language by specifying the procedures and evaluation criteria that would be used in the implementation of the regulations. By letters dated September 26 and November 3, 1997 (Administrative Record Nos. IL–1671 and IL–1672), Illinois provided additional explanatory information. Following is a summary of these procedures and evaluation criteria:

1. Illinois proposed to interpret the regulatory language of 62 IAC 1816.116(a)(3)(F) and 1817.117(a)(3)(F) as follows:

> Non-contiguous, surface disturbance areas, with an approved land use of cropland or pasture/hayland, less than or equal to four acres which have:
>
> 1. Minor soil disturbances from activities such as signs, boreholes, power poles, stockpiles and substations;
> 2. The majority of the subsoil remains in place; and
> 3. Were not affected by coal or toxic material handling, may use the following procedures for determination of revegetation success, in lieu of Section (a)(4).
>
> (i) The operator must document the required three criteria of (F) above have been met.
>
> (ii) The affected area is successfully supporting its approved post mining land use when compared to the similar, adjacent unaffected areas at the end of the responsibility period.
>
> The Department will evaluate areas requested by the operator, using qualified individuals, and determine them successfully revegetated, if it finds subsection (i) and (ii) have been met.

2. Illinois would differentiate the minor disturbances into three main types: (1) Areas where topsoil was left in place, usually less than .25 areas, (2) areas where topsoil was removed and stockpiled and the subsoil was left in place, usually less than one acre, and (3) areas where the topsoil was removed and stockpiled and portions of the area were excavated for foundations or for shaft construction, usually four acres or less.

3. Illinois would ensure all non-toxic contaminants are either prevented from mixing with the subsoil or are adequately removed without significant loss of the in-place subsoil.

4. Illinois would require at a minimum the area to be tilled with an agricultural subsoiler, preferably before topsoil replacement. In the event of poor crop performance on areas being evaluated, Illinois will require tillage to greater depths as deemed appropriate, based on timing, soil handling techniques, and equipment used for reclamation.

5. Illinois would assess the success of the area by the determination the area is supporting is postmining use and there were no observable differences between these areas and adjacent unaffected areas. All determinations of the success of these small areas would be done by qualified individuals experienced in the field of agronomy and soils. The evaluation of the crop would be done near the time of the harvest of the crop grown. The observation would be done for a minimum of two years of the responsibility period, excluding the first year. No phase III bonds would be released before the fifth year of the responsibility period.

## III. Public Comment Procedures

OSM is reopening the comment period on the proposed Illinois program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

## IV. Procedural Determinations

*Executive Order 12866*

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 12, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97–33430 Filed 12–22–97; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 946

**[VA–112–FOR]**

## Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises numerous provisions of the Virginia program for surface coal mining and reclamation operations. The amendment is intended to revise the State program to be consistent with the Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., on January 22, 1998. If requested, a public hearing on the proposed amendment will be held on January 20, 1998. Requests to speak at the hearing must be received by 4:00 p.m., on January 7, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, *Telephone:* (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, *Telephone:* (703) 523–8100

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

### II. Discussion of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record VA–938), the Virginia Department of Mines, Minerals and Energy (DMME) submitted numerous amendments to the Virginia program. The DMME stated that the purpose of the amendments is to address issues identified by OSM pursuant to 30 CFR 732.17(d). The DMME stated that the proposed amendments are intended to be materially consistent with the corresponding Federal standards.

The proposed amendments are as follows:

*4VAC 25–130–701.5* Definitions. Two definitions are amended: ''Previously mined area'' and ''other treatment facilities.''

*4VAC 25–130–779.22* Land use information. This provision is proposed for deletion.

*4VAC 25–130–779.25* Cross sections, maps, and plans. Subsections (a) and (b) are amended.

*4VAC 25–130–780.23* Reclamation Plan; Land Use Information. Subsections (a), (b), and (c) are amended.

*4VAC 25–130–780.25* Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams and Embankments. Subsections (a), (b), (c), and (f) are amended.

*4VAC 25–130–780.35* Disposal of excess spoil. Subsection (b) is amended.

*4VAC 25–130–783.25* Cross sections, maps and plans. Subsection (a) is amended and renumbered.

*4VAC 25–130–784.15* Reclamation Plan: Land Use Information. The existing language is deleted and replaced with new language.

*4VAC 25–130–784.16* Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. Subsections (a), (b), (c), and (f) are amended.

*4VAC 25–130–784.23* Operation plan; maps and plans. Subsections (b) and (c) are amended.

*4VAC 25–130–800.40* Requirements for release of performance bond. New subsection (a)(3) is added.

*4VAC 25–130–816.46* Hydrologic balance; siltation structures. Subsections (a), (b), and (c) are amended.

*4VAC 25–130–816.49* Impoundments. Subsections (a) and (c) are amended.

*4VAC 25–130–816.74* Disposal of excess spoil; preexisting benches. Subsections (a) through (g) are amended.

*4VAC 25–130–816.81* Coal mine waste; general requirements. Subsections (a) and (c) are amended.

*4VAC 25–130–816.89* Disposal of noncoal mine wastes. Subsection (d) is deleted.

*4VAC 25–130–816.104* Backfilling and grading; thin overburden. The existing introductory paragraph is

deleted and replaced by new language, and existing paragraph (a) is revised and renumbered.

*4VAC 25–130–816.105* Backfilling and grading; thick overburden. The existing introductory paragraph is deleted and replaced by new language, and existing paragraph (a) is revised and renumbered.

*4VAC 25–130–817.46* Hydrologic balance; siltation structures. Subsections (a), (b), and (c) are amended.

*4VAC 25–130–817.49* Impoundments. Subsections (a) and (c) are amended.

*4 VAC 25–130–817.74* Disposal of excess spoil; preexisting benches. Subsections (a) through (g) are amended.

*4 VAC 25–130–817.81* Coal mine waste; general requirements. Subsections (a) and (c) are amended.

*4 VAC 25–130–817.89* Disposal of noncoal mine Wastes. Subsection (d) is deleted.

*4 VAC 25–130–823.11* Applicability. Subsection (a) is amended.

*4 VAC 25–130–840.11* Inspections by the division. Subsections (f), (g), and (h) are amended.

*4 VAC 25–130–843.14* Service of notices of violation, cessation orders, and show cause orders. Subsection (a)(2) is amended.

*4 VAC 25–130–845.17* Procedures for assessment of civil penalties. Subsection (b) is amended.

*4 VAC 25–130–845.18* Procedures for assessment conference. Subsections (a) and (b), and new subsection (d) is added.

*4 VAC 25–130–845.19* Request for hearing. Subsection (a) is amended.

*4 VAC 25–130–846.17* Assessment of an individual civil penalty. Subsection (b)(3) is deleted and replaced by a new subsection (c).

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

### *Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 7, 1998. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

### *Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

## VI. Procedural Determinations

### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### *Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97–33431 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DoD 6010.8–R]**

**RIN 0720–AA39**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revisions to the Eligibility Requirements

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises the comprehensive CHAMPUS regulation pertaining to basic CHAMPUS benefits in accordance with several statutory changes. This proposed rule: sets forth the requirements for reinstatement of CHAMPUS eligibility for beneficiaries under age 65 who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability or end-stage renal disease (ESRD); establishes new classes of CHAMPUS eligibles; establishes the Transitional Assistance Management Program which provides transitional health care for members (and their dependents) who served on active duty in support of a contingency operation and for members (and their dependents) who are involuntarily separated from active duty; allows former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy; and makes minor technical revisions to the double coverage provisions. This proposed rule also adds a new category of eligible beneficiary under the Continued Health Care Benefit Program.

**DATES:** Comments must be received by February 23, 1998.

**ADDRESSES:** Send comments to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:**

Stephen E. Isaacson, Program Development Branch, OCHAMPUS, telephone (303) 361–1172.

**SUPPLEMENTARY INFORMATION:**

### I. Eligibility Requirements

This proposed rule adds or revises a number of eligibility provisions. Following is a brief summary of the classes of beneficiaries affected by this proposed rule. Generally, each class is eligible for CHAMPUS as a result of the change, and we have included the other salient points regarding each, but the reader should refer to the subsequent discussion for details regarding the specific conditions and requirements for each class.

CHAMPUS/Medicare dual eligibles.

- Must be under age 65, eligible for Medicare due to disability or end-stage renal disease, and enrolled in Medicare Part B.
- Applies to all categories of CHAMPUS beneficiaries except dependents of active-duty members.
- Effective October 1, 1991.

Dependents of a person who dies of an injury, illness, or disease incurred on the way to or from training with a duration of 30 days or less.

- Retiree cost-sharing.
- Effective November 14, 1986.

Victims of abuse.

- By a member who was discharged or dismissed as a result of a court-martial conviction for the abuse.
- Eligibility limited to one year from member's separation.
- Coverage limited to treatment of conditions resulting from abuse.
- Effective November 14, 1986.
- By a member of former member who loses eligibility to retired pay as a result of the abuse.
- Effective October 23, 1992.

Students who become incapable of self-support.

- Must be full-time student.
- The incapacitating condition must occur between the ages of 21 and 23.
- Effective October 23, 1992.

Dependents of an active duty member who dies while on active duty.

- These individuals have always been eligible for CHAMPUS with retiree cost-sharing.
- The most recent change provides that all care is to be cost-shared as active duty.
- Special cost-sharing is limited to one year.
- Effective October 1, 1993.
- For dependents of active-duty members who die while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty.

Dependents placed in the custody of a member or former member by a court or a recognized placement agency.

- Effective July 1, 1994, if placed by a court.
- Effective October 5, 1994, if placed by a recognized placement agency.
- This category of beneficiary is also added to the Continued Health Care Benefit Program effective October 5, 1994.

Transitional Assistance Management Program (TAMP)

- Claims for all individuals eligible under TAMP are cost-shared as active-duty dependents.
- Members released from active duty in connection with contingency operations.
- Eligible up to thirty (30) days.
- Effective April 6, 1991.
- Members involuntarily separated with less than six (6) years of service.
- Eligible up to sixty (60) days.
- Effective October 1, 1990.
- Members involuntarily separated with six (6) or more years of service.
- Eligible up to 120 days.
- Effective October 1, 1990.

### II. Reinstatement of CHAMPUS Eligibility for Certain Medicare Beneficiaries

*A. Regulation Amendment*

The regulation is being amended to implement a series of laws enacted to reinstate CHAMPUS eligibility for certain individuals who, under previous laws, would have lost their CHAMPUS eligibility due to their eligibility for Medicare. This section briefly describes the amendment. A discussion of the legislative enactments will then follow, providing further explanation of the amendment and the various interim actions taken for implementation.

The amendment provides that CHAMPUS eligibility will be reinstated for beneficiaries:

1. Under age 65;

2. Who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability (as defined in 42 U.S.C. 426(b)(2)) *or* as a result of end stage renal disease (ESRD) (as defined in 42 U.S.C. 426–1(a)); *and*,

3. Who are enrolled in the supplementary medical insurance program under Medicare Part B.

Under this amendment, CHAMPUS eligibility will be reinstated effective upon the date the individual meets all three requirements cited above *except* that eligibility cannot be reinstated for care received prior to October 1, 1991.

Initially, a special coordination of benefits procedure was established by

law under which CHAMPUS benefits were paid for care received by these reinstated eligible beneficiaries. Under that special procedure, Medicare benefits would have to be paid first; then CHAMPUS, generally, would pay only the amount of the remaining bill which exceeded the beneficiaries; CHAMPUS deductible, copayment, and balance billing charge. Therefore, the beneficiary usually had to pay a portion of the bill even if the amount remaining after Medicare payment did not exceed the payment CHAMPUS would have made *if* the patient had not been eligible for Medicare.

However, under the most recent legislation, the special coordination of benefits procedure has been suspended and the normal coordination of benefits procedure used by CHAMPUS has been authorized for reinstated eligible beneficiaries. Under that procedure, after Medicare benefits have been paid, CHAMPUS, generally, will pay the amount of the remaining bill up to the amount CHAMPUS would have paid *if* the patient had not been eligible for Medicare. Because some claims were processed under the special coordination of benefits procedure prior to enactment of this recent legislation, the regulation amendment permits beneficiaries to resubmit such claims for reprocessing and payment under the normal coordination of benefits procedure.

Use of the normal coordination of benefits procedure was first authorized by the Department of Defense Appropriations Act for FY 1993. It was repeated in subsequent appropriations acts and was incorporated into the CHAMPUS law by the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337)

*B. Background*

Both section 704 of the National Defense Authorization Act for fiscal years 1992 and 1993 (P.L. 102–190) and section 8097 of the Department of Defense Appropriations Act, 1002. (P.L. 102–172) contained provisions which reinstate CHAMPUS eligibility for certain individuals who would otherwise have lost their CHAMPUS eligibility. As the Senate Armed Services Committee report stated, ''Under current law, a CHAMPUS beneficiary who is classified as fully disabled for two years under Social Security standards automatically becomes eligible for Medicare and loses CHAMPUS eligibility. This provision would authorize CHAMPUS to be a secondary payer to Medicare * * * .'' This action, according to the report, ''provides a needed, equitable safely net to CHAMPUS beneficiaries who currently lose their CHAMPUS coverage through no fault of their own before the normal point of conversion to Medicare at age 65.''

The goal of this provision was to limit the out-of-pocket expenses of these individuals. By restoring CHAMPUS eligibility for these individuals, the coordination of benefits process will ensure that the Medicare payment is at least as much as the CHAMPUS payment would have been in the absence of Medicare, and, if it is not, CHAMPUS will pay the difference. Individuals will benefit, not only in cases where the CHAMPUS cost-share or deductible is less than Medicare's, but by being included in the more generous CHAMPUS coverage of certain services, notably prescription drugs and mental health services. For example, Medicare does not cover prescription drugs, but CHAMPUS does.

These laws set forth special procedures for determining CHAMPUS payment in these dual eligibility cases, and these were distinct from the normal coordination of benefits procedures followed by CHAMPUS in double coverage situations. These procedures are explained in greater detail in Section D of this Section II. In addition, the laws established two effective dates depending upon the beneficiary class, and they limited application of these provisions to certain beneficiary classes. Specifically, only those beneficiaries whose eligibility for Medicare was based on disability were able to have their CHAMPUS eligibility restored, while those beneficiaries whose Medicare eligibility was based on end-stage renal disease (ESRD) were not affected by those provision and remained ineligible for CHAMPUS.

In an attempt to rectify some of the inconsistencies above, further statutory changes were made for FY 1993. Section 705 of the National Defense Authorization Act for FY 1993 (P.L. 102–484, enacted October 23, 1992) and Section 9084 of the Department of Defense Appropriations Act, 1993 (P.L. 102–396, enacted October 6, 1992) contain provisions which affect these procedures. The Authorization Act extended the dual eligibility provisions to individuals with ESRD, although the Appropriations Act continued to recognize only disabled former members and their dependents as eligible for reinstatement of CHAMPUS eligibility. On the other hand, the Appropriations Act required use of normal coordination of benefits procedures for disabled former members and their dependents while the Authorization Act continued to require use of the special payment procedures for all beneficiaries whose CHAMPUS eligibility was reinstated. The laws also changed the effective date of the provisions, making them retroactive to October 1, 1991, and eliminating the two effective dates. Lastly, the Appropriations Act contained a $20 million limitation on the total CHAMPUS payments which could be made under some of the provisions. This limitation is further described in Section F. of this Section II.

Section 302 of the Supplemental Appropriations Act of 1993 (P.L. 103–50, enacted on July 2, 1993) made additional changes to eliminate some of the remaining inconsistencies. It restored CHAMPUS eligibility for individuals who would have lost their CHAMPUS eligibility due to Medicare eligibility based on ESRD, and thus brought the Appropriations Act into agreement with the Authorization Act with regard to the individuals affected. It also required that the normal coordination of benefits procedures be used for *all* beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions and made this retroactive to October 1, 1991. This also affects the application of the $20 million limitation on payments as described in Section F. below.

The limitation on payments was not included in the FY 1994 Appropriation Act, but the procedural differences from the authorization act continued. As of FY 1995 the differences were resolved by inclusion in the Authorization Act for FY 1995 language which specified use of normal double coverage procedures for these beneficiaries.

*C. Eligibility*

We are applying this provision to all individuals eligible for CHAMPUS under title 10, U.S.C., section 1086(c). Initially the Appropriations Acts (both P.L. 102–172 and P.L. 102–396) included only former members of the Uniformed Services (those who are entitled to retired or retainer pay or equivalent pay) and the dependents of such former members. However, the Authorization Acts (P.L. 102–190 and P.L. 102–484) and the Supplemental Appropriations Act of 1993 (as well as subsequent authorization and appropriations acts) included these beneficiaries as well as former spouses, dependents of deceased active duty members, and dependents of deceased former members.

In addition to meeting the requirements of title 10, U.S.C., section 1086(c), individuals also must meet the following requirements in order to have their CHAMPUS eligibility restored.

1. They must be under age 65, the age at which the beneficiary would normally be required to switch from CHAMPUS to Medicare coverage.

2. They would otherwise have lost their CHAMPUS eligibility due to eligibility for Medicare Part A as a result of disability as defined in 42 U.S.C. 426(b)(2) or ESRD as defined in 42 U.S.C. 426–1(a). Under the provisions of the 1992 Authorization and Appropriations Acts, only those individuals who are disabled may have their CHAMPUS eligibility restored. Individuals under age 65 who have lost their CHAMPUS eligibility based on entitlement to Medicare due to ESRD were excluded from both Acts. However, the Defense Authorization Act for 1993 and the Supplemental Appropriations Act of 1993 (and subsequent acts) included ESRD as a basis for reinstating CHAMPUS eligibility for all beneficiaries included in title 10, U.S.C. section 1086(c).

3. The individual must be enrolled in Part B of Medicare. If an individual who is enrolled in Part B subsequently disenrolls, CHAMPUS eligibility will end effective with the date of termination of Part B enrollment. Likewise, CHAMPUS eligibility cannot begin prior to enrollment in Part B of Medicare.

Any individual who meets these eligibility requirements must enroll under the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment is available through the individual's Uniformed Service at the nearest military personnel office. As with all CHAMPUS eligibility, it is solely the individual's responsibility to enroll under DEERS, and, except as described in Section G. below, no attempt will be made by the Office of CHAMPUS (OCHAMPUS), by the CHAMPUS contractors, or by any other entity to identify or enroll eligible individuals. In enrolling under DEERS, the individual will be required to provide the necessary documentation of age, disability or ESRD, and Medicare enrollment in Parts A and B.

*D. Coordination of Benefits*

These provisions do not affect in any way the CHAMPUS benefits available. They only extend CHAMPUS eligibility to the affected individuals and provide for payment procedures for CHAMPUS as secondary payer to Medicare. These provisions also do not affect the statutory limitations regarding CHAMPUS' status as secondary payer to all other coverage except Medicaid and CHAMPUS supplemental plans. Therefore, before a claim is submitted to CHAMPUS, it first must be submitted to all other coverages including Medicare supplemental plans.

The FY 1992 Authorization and Appropriations Acts required special payment procedures for all beneficiaries affected by this provision. These procedures were intended to ensure that a beneficiary's out-of-pocket expenses were no greater than they would have been if CHAMPUS were the primary payer. While this ensured that beneficiaries were not financially penalized for becoming eligible for Medicare due to disability, these procedures often resulted in less CHAMPUS payment (and a commensurate increase in beneficiary liability) than would have occurred under the normal coordination of benefits procedures. As a result of this, the FY 1993 Appropriations Act required normal coordination of benefits procedures to be used, but it only applied to claims for disabled former members and their dependents. The special payment procedures still were to be applied to former members and their dependents who are eligible for Medicare based on ESRD as well as to all affected dependents of deceased active duty members, dependents of deceased former members, and former spouses whether their eligibility for Medicare is based upon disability or ESRD. As a result of the Supplemental Appropriations Act of 1993 and subsequent authorization and appropriations acts, normal coordination of benefits procedures are to be applied to all beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions.

Under normal coordination of benefits procedures, CHAMPUS will reimburse the difference between the billed amount (or the amount the provider is required to accept as full payment) and what the other insurance coverage paid, if that difference is less than what CHAMPUS would have paid in the absence of other coverage. In most cases, this results in no remaining out-of-pocket expense for the beneficiary.

Under the special payment procedures, CHAMPUS payment was limited to the amount by which the patient's Medicare deductible, cost-share, and appropriate balance billing costs exceed the patient's CHAMPUS deductible, cost-share, and balance billing costs. Since the CHAMPUS cost-share for these beneficiaries is often greater than the Medicare cost-share or deductible, in many cases this resulted in no CHAMPUS payment, and the beneficiary always had out-of-pocket expenses (unless the beneficiary also was covered by a Medicare or CHAMPUS supplemental plan).

Even if CHAMPUS makes no payment it is still advantageous to the beneficiary for the claim to be submitted to CHAMPUS. On all such claims the CHAMPUS cost-sharing and deductible amounts which are paid by other health insurance, including Medicare, will be credited toward meeting the CHAMPUS deductible and the catastrophic cap. Only by submitting these claims to CHAMPUS can the deductible and catastrophic cap entries be made, and this can have a significant impact on CHAMPUS payments on subsequent claims, especially once the catastrophic cap has been met.

If the care received by a beneficiary is not a benefit under Medicare but is under CHAMPUS (e.g. prescription drugs), CHAMPUS will process the claim as a routine claim. If the care is a benefit under both Medicare and CHAMPUS, the procedures explained above will be followed.

In all cases, claims must first be processed by Medicare, and it will be necessary for a Medicare explanation of benefits to be forwarded to the CHAMPUS claims processing contractor with the claim. The Medicare explanation of benefits must reflect the Medicare payment and the patient's Medicare deductible and cost-share.

This change will be applied on a claim by claim basis. In other words, if a beneficiary has an episode of care which involves an inpatient hospital stay and care by several professional providers, each claim submitted for the care will be processed independently, and there will be no attempt made to consolidate the claims.

The following examples are provided to demonstrate the normal CHAMPUS coordination of benefits procedures and the special procedures and the impact of each on CHAMPUS payments. Although the special procedures are no longer used, we are including them in the examples, since the laws required them to be used for a period of time and a large number of claims were processed using them.

1. EXAMPLE 1—NORMAL COORDINATION OF BENEFITS

| | |
|---|---|
| Hospital bills for inpatient care | $5,722.00 |
| Medicare DRG-based amount .. | 5,368.95 |
| Medicare inpatient hospital deductible ..... | 652.00 |
| Medicare payment ..... | 4,716.95 |
| CHAMPUS DRG-based amount | 4,949.59 |

1. EXAMPLE 1—NORMAL COORDINATION OF BENEFITS—Continued

| | |
|---|---|
| CHAMPUS beneficiary cost-share | [1] 1,430.50 |

[1] For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount ($360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

*Step 1.* Determine CHAMPUS payment in the absence of any other coverage. This amount is $3,519.09.

*Step 2.* Subtract the Medicare primary payment from the CHAMPUS DRG-based amount. This leaves $232.64.

*Step 3.* Subtract the Medicare primary payment from the hospital's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). The hospital must accept the Medicare DRG-based amount as payment in full, so this step results in $652.00.

*Step 4.* Subtract any applicable beneficiary cost-sharing amounts from the provider's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). This results in $4,043.95.

*Step 5.* CHAMPUS payment is the least of Steps 1 through 4. CHAMPUS pays $232.64. The beneficiary's liability is zero, since the hospital has been paid the full CHAMPUS DRG-based amount, and it must accept this as payment in full.

2. EXAMPLE 2—SPECIAL PAYMENT PROCEDURES

| | |
|---|---|
| Hospital bills for inpatient care | $5,722.00 |
| Patient liability under medicare: | |
| Medicare DRG-based amount | 5,368.95 |
| Inpatient hospital Medicare deductible | 652.00 |
| Medicare pays | 4,716.95 |
| Patient liability under CHAMPUS: | |
| CHAMPUS DRG-based amount | 4,949.59 |
| Beneficiary cost-share | [1] 1,430.50 |

[1] For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount ($360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment.

There are several other ramifications which are pertinent here. Since the beneficiary is eligible for CHAMPUS, the claim must be submitted to CHAMPUS *before* the beneficiary can be billed for any amounts. CHAMPUS must be billed if there is any remaining beneficiary liability after Medicare processes the claim—even if the provider is certain that no payment will be made by CHAMPUS. Any attempt to bill the beneficiary without first billing CHAMPUS can be considered a violation of the statutory-based participation requirement and can result in exclusion of the provider by CHAMPUS and possibly by Medicare. In the above example, once the claim is submitted to CHAMPUS, the CHAMPUS DRG-based allowance ($4,949.59) becomes the full payment amount for the claim. Even though CHAMPUS makes no payment, the beneficiary liability is decreased from $652 (the Medicare inpatient deductible) to $232.64 (the difference between the CHAMPUS DRG-based allowance and the amount Medicare paid).

3. EXAMPLE 3.—NORMAL COORDINATION OF BENEFITS

| | |
|---|---|
| Physician bills for surgery | $1,200.00 |
| Medicare allows | 925.000 |
| Medicare cost-share | 185.00 |
| Medicare payment | 740.00 |
| (Assumes the deductible has been met) | |
| CHAMPUS allows | 975.00 |
| CHAMPUS cost-share | 243.75 |
| (Assumes the deductible has been met) | |

*Step 1:* Determine CHAMPUS payment in the absence of any other coverage. This amount is $731.25.

*Step 2:* Subtract the primary payment from the billed charge. This results in $460.00.

*Step 3:* CHAMPUS payment is the lesser of Steps 1 and 2. CHAMPUS pays $460.00, and the beneficiary's liability is zero.

4. EXAMPLE 4.—SPECIAL PAYMENT PROCEDURES

| | |
|---|---|
| Physician bills for surgery | $1,200.00 |
| Patient liability under Medicare: | |
| Medicare allows | 925.00 |
| Medicare cost-share | 185.00 |
| Medicare payment | 740.00 |
| (Assumes the deductible has been met) | |
| Patient liability under CHAMPUS: | |
| CHAMPUS allows | 975.00 |
| CHAMPUS cost-share | 243.75 |
| (Assumes the deductible has been met) | |

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment, and the beneficiary's liability is $185 if the provider participates or $460 is the provider does not participate.

5. EXAMPLE 5.—SPECIAL PAYMENT PROCEDURES

| | |
|---|---|
| Mental illness outpatient care bill | $450.00 |
| (This is a benefit where Medicare pays only 50 percent of the allowed charges.) | |
| Patient liability under Medicare: | |
| 50% of allowed charges | 225.00 |
| (Assumes the full billed charge was allowed and the $100 deductible has been met.) | |
| Patient liability under CHAMPUS: | |
| 25% of allowed charge | 112.50 |
| (Assumes the full billed charge was allowed and the $150 deductible has been met) | |

Since Medicare liability is greater than CHAMPUS liability, CHAMPUS pays the difference of $112.50, and the beneficiary is liable for the remaining $112.50.

*E. Effective Date*

According to the FY 1993 Authorization Act and subsequent authorization and appropriations acts, the effective date of this change is October 1, 1991. This effective date applies only if the individual lost CHAMPUS eligibility prior to the effective date. If CHAMPUS eligibility was lost after the effective date, CHAMPUS eligibility, and use of the payment procedures required by this change, will begin on the date the individual first meets the eligibility requirements in Section C. above. In this case, effective means that the individual's eligibility will begin on the effective date and claims will be processed accordingly.

The above effective date is changed from the effective date contained in the FY 1992 Authorization and Appropriation Acts. The procedures required by those acts were effective for former members and their dependents as of October 1, 1991, and for all other beneficiaries in title 10, U.S.C., section 1086(c) as of December 5, 1991.

As noted in Section C. above, it is the individual's responsibility to establish eligibility through DEERS in order to have claims processed by CHAMPUS. In many cases this will result in retroactive implementation of this change for claims for services incurred between the effective date and implementation of the change pursuant to the final rule for this change. In order to provide for some closure to this retroactive implementation, we propose that beneficiaries will be given 180 days

from the date of publication of the final rule to apply to DEERS for reinstatement of their eligibility. After that period, we will begin eligibility effective with the date of application to DEERS. In addition, these beneficiaries will have 180 days from the date of publication of the final rule to submit claims pursuant to their reinstated eligibility which are outside of the normal CHAMPUS claims filing deadlines.

*F. Limitation on Total Payments*

The FY 1993 Appropriations Act provided that ''$20,000,000 shall be available * * * to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, * * * for a former member of the uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act * * * solely on the grounds of physical disability: * * * .'' We treated this as a maximum limitation on the amount that could be spent for these beneficiaries.

The Supplemental Appropriations Act of 1993 did not directly alter this provision. However, as a result of the changes made by the Supplemental Appropriations Act of 1993, the limitation applied to all beneficiaries ''described by section 1086(c) of title 10, United States Code,'' and ESRD in addition to physical disability was included as a qualifying condition. As a result, all payments made for reinstated beneficiaries were subject to the limitation. This limit was not reached in FY 1993, and it was not included in subsequent appropriations acts.

**III. Establishment of New Classes of CHAMPUS Eligibles**

Several new classes of CHAMPUS eligibles have been added by changes to the Department of Defense Authorization Acts for recent years. These new classes are:

- Eligible spouses (including former spouses) or children of a reservist who died after September 30, 1985, from an injury or illness incurred or aggravated while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after October 1, 1985, and were added by Section 652(c) of the Department of Defense Authorization Act, 1986 (P.L. 99–145).
- Eligible spouses (including former spouses) or children of a reservist who died from a disease incurred or aggravated after November 14, 1986, while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by Section 604(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99–661).
- Eligible spouses (including former spouses) and children of a member who are victims of abuse by the member and the member receives a dishonorable or bad-conduct discharge or is dismissed from a Uniformed Service as a result of a court-martial conviction for abuse of the dependent, or was administratively discharged as a result of such an offense. Medical benefits are limited to treatment of injuries resulting from the abuse for one year from the date of the person's separation from the Uniformed Service. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99–661).
- Eligible spouses (including former spouses) and children who are victims of abuse by a member or former member of a Uniformed Service who, while a member and as a result of misconduct involving abuse of a dependent, has eligibility to receive retired pay on the basis of years of service terminated. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484).
- Otherwise eligible dependent children who are not married and are incapable of self-support because of a mental or physical disability that occurred between the ages of twenty-one (21) and twenty-three (23) while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support. The incapacity must be continuous. If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity unless the incapacity recurs and the beneficiary is under age twenty-one (21) or is under age twenty-three (23) and is enrolled as a full-time student. If the child was not incapacitated on his or her twenty-third (23rd) birthday, but becomes incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484).
- Dependents of active-duty members who die while on active duty. These individuals were previously eligible, but now all care is to be cost-shared as active duty for one year. These special cost-sharing provisions apply to services or supplies provided on or after October 1, 1993. For dependents of activity-duty members who dies while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty. In both situations it is important to note that this provision does not preclude loss of eligibility during the one-year period as a result of any condition which routinely results in loss of CHAMPUS eligibility such as reaching age limits, remarriage, etc. These provisions were added by Section 707(c) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337).
- Dependents who are placed in the custody of a member or former member by a court for a period of twelve (12) consecutive months or more. These beneficiaries are eligible for services or supplies provided on or after July 1, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160).
- Dependents who are placed in the home of a member or former member by a placement agency which is recognized by the Secretary of Defense in anticipation of the legal adoption of the child. These beneficiaries are eligible for services or supplies provided on or after October 5, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337).

**IV. Transitional Assistance Management Program**

Based upon the provision of the National Defense Authorization Act, FY 1991 (P.L. 101–510), the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (P.L. 102–25), and the National Defense Authorization Act, FY 1995, transitional health care benefits under CHAMPUS

have been authorized for certain service members and their families under limited circumstances. The categories affected include members and their dependents who served in connection with contingency operations and those members otherwise subject to involuntary separations from active duty. The program that implements these provisions is known as the Transitional Assistance Management Program (TAMP). All individuals eligible under TAMP will be subject to the same cost-sharing requirements applicable to dependents of active-duty members.

Under TAMP, members who are released from active duty in connection with contingency operations are eligible for CHAMPUS for up to thirty (30) days or until covered by an employer-sponsored health plan, whichever occurs first. The earliest effective date of eligibility for these beneficiaries is April 6, 1991.

UnderTAMP, members who are involuntarily separated with less than six (6) years of active service are eligible for CHAMPUS for sixty (60) days. Members who are involuntarily separated with six (6) or more years of active service are eligible for CHAMPUS for 120 days. The TAMP provisions applicable to involuntary separations are effective for nine years beginning October 1, 1990.

TAMP also provided for extended CHAMPUS coverage for certain individuals on a premium basis. Previously, these individuals, upon losing CHAMPUS eligibility, were eligible to purchase temporary coverage under a plan arranged by the Department of Defense with Mutual of Omaha Insurance Company. This plan was known as Uniformed Services Voluntary Insurance Policy (US VIP). Section 4408 of P.L. 102–484 significantly revised this program. The program is now required to provide coverage with premiums and benefits comparable to the Federal Employees Health Benefits Program (FEHBP) and for 18 to 36 months depending on the eligibility category. The program is known as the Continued Health Care Benefit Program (CHCBP) and is described in detail in 32 CFR Part 199.20. Eligibility under the CHCBP is extended to certain members who are discharged or released from active duty, whether voluntarily, or involuntarily, under other than adverse condition, to certain former spouses of members or former members, and to certain children of a member or former member who otherwise would not meet the requirements for eligibility as a dependent. Although technically these individuals are not CHAMPUS beneficiaries, this program is mentioned here because it will enable these individuals to purchase coverage similar to CHAMPUS. The program began October 1, 1994, and specific implementation procedures have been published.

**V. Extension of Eligibility Period for Former Spouses Who Buy a Conversion Health Policy**

Subsections 4407(b) and (c) of the National Defense Authorization Act for Fiscal Year 1993 amended Section 1086a of title 10 U.S.C. to allow otherwise eligible former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy. The previous limit on such extended CHAMPUS benefits was one year. This provision applied only to the USVIP policies, and the CHCBP does not have an exclusion for preexisting conditions. Since the USVIP expired on September 30, 1994, this two-year extension of CHAMPUS benefits was effective only until September 30, 1996. Therefore, we re not including any change to the regulation to incorporate this provision, since this provision has already expired.

**VI. Eligibility Determinations**

Although OCHAMPUS is tasked with publishing legislatively mandated eligibility changes to Title 10 U.S.C., determination of dependent eligibility for CHAMPUS is the primary responsibility of the Uniformed Services. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification. However, a determination by the Uniformed Services that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements of CFR Part 199 must be met. Disputes regarding eligibility as a dependent or dates of beginning eligibility for benefits under CHAMPUS can only be resolved by the appropriate Uniformed Service Secretary.

**VII. Technical Revisions to the Double Coverage Provisions**

We are also making several wording changes to Paragraph (a) of Section 199.8, Double Coverage, in order to make it conform to the latest version of 10 U.S.C. 1079(j)(1) as revised by Section 713, P.L. 102–190. These changes merely revise some of the wording and have no affect on the actual double coverage procedures under CHAMPUS. We are making them at this time, since Section 199.8 is being revised by this rule.

**VIII. Addition of New Category of Eligible Beneficiary Under the Continued Health Care Benefit Program (CHCBP)**

Section 702 of the 1995 National Defense Authorization Act (P.L. 103–337) expanded the eligibility for health care coverage under the CHCBP to a fourth group of beneficiaries from the group originally authorized in the CHCBP Final Rule, published in the **Federal Register** on September 30, 1994, (59 FR 49817). Eligibility to enroll in the CHCBP has been expanded to now include unmarried persons placed in the legal custody of a member or former member as the result of a court order or by a placement agency recognized by the Secretary of Defense.

Health care coverage in the CHCBP is for a specific time period. For the new group of eligible beneficiaries—unmarried persons placed in the legal custody of a member or former member (age 21 if not in college or up to age 23 if in college)—coverage can be up to a total of 36 months. These individuals will have 60 days to enroll beginning the date they become eligible.

This change is effective October 5, 1994.

**IX. Regulatory Procedures**

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this proposed rule are minor revisions to the existing regulation. Since this proposed rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**List of Subjects in 32 CFR Part 199**

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR Part 199 is amended as follows:

**PART 199—[AMENDED]**

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended by adding new definitions for *Abused dependent, Deceased reservist, Deceased retiree, Former member, Member, Reservist* in alphabetical order, by removing the definition for *Deceased service member* and adding in alphabetical order a new definition for *Deceased member,* and by revising the definitions for *Child, Defense Enrollment Eligibility Reporting System (DEERS), Dependent, Sponsor, Spouse, Widow or Widower* to read as follows:

**§ 199.2 Definitions.**

* * * * *

(b) * * *

*Abused dependent.* An eligible spouse or child, who meets the criteria in § 199.3 of this part, of a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense, *or* of a member or former member who has had their entitlement to receive retired pay terminated because of misconduct involving physical or emotional abuse.

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*Child.* An unmarried child of a member or former member, who meets the criteria (including age requirements) in § 199.3 of this part.

* * * * *

*Deceased member.* A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less.

*Deceased reservist.* A reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training and dies as a result of that specific injury, illness or disease.

*Deceased retiree.* A person who, at the time of his or her death, was entitled to retired or retainer pay or equivalent pay based on duty in a Uniformed Service. For purposes of this part, it also includes a person who died before attaining age 60 and at the time of his or her death:

(1) Would have been eligible for retired pay as a reservist but for the fact that he or she was not 60 years of age; and

(2) Had elected to participate in the Survivor Benefit Plan established under chapter 73 of tile 10 U.S.C.

* * * * *

*Defense Enrollment Eligibility Reporting System (DEERS).* An automated system maintained by the Department of Defense for the purpose of:

(1) Enrolling members, former members and their dependents; and

(2) Verifying members', former members' and their dependents' eligibility for health care benefits in the direct care facilities and for CHAMPUS.

* * * * *

*Dependent.* Individuals whose relationship to the sponsor (including NATO members who are stationed in or passing through the United States on official business when authorized) leads to entitlement to benefits under this part. (See § 199.3 of this part for specific categories of dependents).

* * * * *

*Former member.* A retiree, deceased member, deceased retiree, or deceased reservist in certain circumstances (see § 199.3 of this part for additional information related to certain deceased reservists' dependents' eligibility). Under conditions specified under § 199.3 of this part, former member may also include a member of the Uniformed Services who has been discharged from active duty (or, in some cases, full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions and qualifies for CHAMPUS benefits under the Transitional Assistance Management Program or the Continued Health Care Benefits Program.

* * * * *

*Member.* A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less. (For CHAMPUS cost-sharing purposes only, a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense is considered a member).

* * * * *

*Reservist.* A person who is under an active duty call or order to one of the Uniformed Services for a period of 30 days or less or is on inactive training.

* * * * *

*Sponsor.* A member or former member of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based. A sponsor also includes a person who, while a member of the Uniformed Services and after becoming eligible to be retired on the basis of years of service, has his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse or dependent child. It also includes NATO members who are stationed in or passing through the United States on official business when authorized. It also includes individuals eligible for CHAMPUS under the Transitional Assistance Management Program.

*Spouse.* A lawful husband or wife, who meets the criteria in § 199.3 of this part, regardless of whether or not dependent upon the member or former member for his or her own support.

* * * * *

*Widow or Widower.* A person who was a spouse at the time of death of a member or former member and who has not remarried.

* * * * *

3. Section 199.3 is revised to read as follows:

**§ 199.3 Eligibility.**

(a) *General.* This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this Part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) *CHAMPUS eligibles*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniform Service.

(2) *Dependent.* Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependent include the following:

(i) *Spouse.* A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraph (b)(2)(i)(A) through (b)(2)(i)(E) of this section and must qualify under

the group defined in paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*):

(A) Must be unremarried; and

(B) Must not be covered by an employer-sponsored health plan; and

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must not be eligible for Part A of Title XVII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; and

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*) of this section:

(*1*) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(*i*) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(*ii*) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(*2*) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(*ii*) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(*iii*) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) *Child.* A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

(A) A legitimate child; or

(B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or

(C) A legitimate stepchild; or

(D) An illegitimate child of a member or former member whose paternity/maternity has been determined judicially, and the member or former member directed to support the child; or

(E) An illegitimate child of a member or former member whose paternity/maternity has not been determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or

(F) An illegitimate child of a spouse of a member who resides with or in a home provided by the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a spouse of a former member who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of following classes:

(*1*) *A student.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapters 34 and 35.

Note to paragraph (b)(2)(ii)(H)(*1*): Courses of education offered by institutions listed in the ''Education Directory, ''Higher Education'' or ''Accredited Higher Institutions'' issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*2*) *An incapacitated child.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has not attained the age of 21, and is incapable of self-support because of a mental or physical disability that:

(*i*) Existed before the child's twenty-first (21st) birthday; or

(*ii*) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see Note to paragraph (b)(2)(ii)(H)(*2*)), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(*iii*) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(*2*)(*ii*) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

Note to paragraph (b)(2)(ii)(H)(*2*): An institution of higher learning is a college, university, or similar institution, including a technical or business school, offering post-

secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post-secondary degree. The term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701). Courses of education offered by institutions listed in the ''Education Directory'', ''Higher Education'' or ''Accredited Higher Institutions'' issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*3*) *A child of a deceased reservist.* A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(*4*) *A child placed in legal custody of a member or former member.* A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) *Abused dependents.*—(A) *Categories of abused dependents.* An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(*1*) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense. Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service.

(*2*) The spouse (including a former spouse) or child of a member or former member who while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) *Requirements for categories of abused dependents.* (*1*) *Abused spouse.* As long as the spouse is receiving payments from the Dod Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:.

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a lawful husband or wife or a former spouse of the member; or

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and—

(*A*) Be a victim of the abuse; and

(*B*) Have been married to the member or former member at the time of the abuse; or

(*C*) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(*2*) *Abused child.* The abused child must:

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a dependent child of the member or former member.

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section—

(*A*) Have been a member of the household where the abuse occurred; and

(*B*) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(*C*) Be under the age of 18; or

(*D*) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(*E*) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purpose of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(*iii*) The dependent child is eligible for health care, regardless of whether any court order exists, under the same conditions as any dependent of a retired member.

(3) *TAMP eligibles.* A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this section.

(c) *Beginning dates of eligibility.* (1) Beginning dates of eligibility dependent on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse (excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists) are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped);

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified in paragraph (b)(2)(i) of this section;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(3) Beginning dates of eligibility for spouses who are victims of abuse (excluding spouses who are victims of abuse of certain deceased reservists) are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For medical and dental care for problems associated with the physical

or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(4) Beginning dates of eligibility for spouses of certain deceased reservists, including spouses who are victims of abuse of certain deceased reservists, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse, for the limited benefits and period of eligibility described in paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(5) Beginning dates of eligibility for each class of dependent children, (excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning), are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a member, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956.

(B) Outpatient medical benefits under the Basic Program, October 1, 1966.

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967.

(ii) Legitimate child, adopted child or legitimate stepchild of former members:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(iii) Illegitimate child of a male or female member or former member whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependent children of members only, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity has not been determined judicially;

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half or his or her support, or was so dependent on the member or former member at the time of death; for:

(*1*) All benefits for which otherwise eligible, January 1, 1969.

(*2*) Program for Persons with Disabilities (formerly known as the Program for the handicapped) limited to dependent children of members only, January 1, 1969.

(v) An adopted child, 21 years or older, with an incapacitating condition that existed before the age of 21, who was adopted after the age of 21, who has been residing with a member or former member for at least 12 months prior to the date of the adoption and is, or continues to be, dependent upon the member or former member for over one-half of his or her support, or was so dependent upon the former member at the time of the former member's death; for:

(A) All benefits for which otherwise entitled, October 23, 1992.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependents of members only, October 23, 1992.

(6) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(*3*) of this section, excluding incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, for:

(i) Benefits under the Basic program, November 14, 1986.

(ii) Not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(7) Beginning dates of eligibility for children who are victims of abuse who meet the requirements of paragraph (b)(2)(iii) of this section, including incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section for:

(i) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) Medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(8) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support for:

(i) All benefits for which otherwise entitled; October 23, 1992.

(ii) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 23, 1992.

(9) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(*4*) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, July 1, 1994.

(ii) Has been placed in custody by a recognizing adoption agency:

(A) All benefits for which entitled, October 5, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 5, 1994.

(10) Beginning dates of eligibility for a retiree for:

(i) Medical benefits under the Basic Program January 1, 1967.

(ii) Retirees and their dependents are not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(d) *Dual eligibility*. Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsors.

*Note to paragraph (d):* No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) *Eligibility under the Transitional Assistance Management Program (TAMP).* Transitional health care benefits under CHAMPUS are authorized for the applicable time period described as follows for:

(1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:

(i) Activated Guard/Reserve and their dependents;

(ii) Involuntary stop-loss and their dependents; and

(iii) Voluntary stop-loss and their dependents; and

(iv) Members who accepted Voluntary Separation Incentives (VSI).

(2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990.

(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) *Changes in status which result in termination of CHAMPUS eligibility.* Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) *Changes in the status of a member.* (i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

*Note to paragraph (f)(1):* A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in the status of a retiree.* (i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(*2*) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

*Note to paragraph (f)(2):* A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Changes in the status of a dependent.* (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

*Note to paragraph (f)(3)(i):* An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

*Note to paragraph (f)(3)(ii):* An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(*2*) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty member's and beneficiaries not eligible for Part A Medicare. CHAMPUS eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65.

*Note to paragraph (f)(3)(vii):* If the person is not eligible for Part A of Medicare, he or she must file a Social Security

Administration ''Notice of Disallowance'' certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals who lose their CHAMPUS eligibility because they have reached the age limitation or were eligible for Part A, Medicare cannot be reinstated under CHAMPUS. Additionally, individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act, retain eligibility under CHAMPUS (refer to § 199.8 of this part for additional information when a double coverage situation is involved).

(vii) *End stage renal disease.* Medicare coverage begins with the third month after the month a course of maintenance dialysis begins, or with the first month of dialysis if the individual participates in a self-dialysis training program during the 3-month waiting period, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed within the following 2 months). If a transplant is delayed more than 2 months after the preparatory hospitalization, Medicare coverage will begin with the second month prior to the month of transplant. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426–1(a);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(ix) *Individuals with certain disabilities.* Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligibility for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility and may not qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(*2*) of this section.

(g) *Reinstatement of CHAMPUS eligibility.* Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) *End stage renal disease.* Medicare coverage ceases for end stage renal disease patients with the 36th month after the month in which a successful kidney transplant takes place or with the 12th month after the month in which the course of maintenance dialysis ends. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(viii) of the section, at this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) *Determination of eligibility status.* Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) *Procedures for determination of eligibility.* Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) *CHAMPUS procedures for verification of eligibility.* (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions of this section.

4. Section 199.4 is amended by revising paragraphs (e)(5)(iii)(B), (f)(1), (f)(2) heading and introductory text, (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(3) heading and introductory text, (f)(3)(i), (f)(3)(iii), (f)(4) introductory text and (f)(4)(ii) to read as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable

preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (See § 199.3 of this part for additional information on end stage renal disease.)

* * * * *

(f) * * *

(1) *General.* As stated in paragraph (a) of this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of members than for other classes of beneficiaries.

(2) *Dependents of members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of members is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of this part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

(iii) *Outpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(iv) *Ambulatory surgery.* Notwithstanding the above positions pertaining to outpatient cost-sharing, dependents of members of the Uniformed Services are responsible for payment of $25 for surgical care that is authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

* * * * *

(3) *Former members and dependents of former members.* CHAMPUS beneficiary liability set forth for former members and dependents of former members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided former members and dependents of former members is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E–5 or above (refer to paragraph (f)(2)(i) (A) or (B) of this section).

* * * * *

(iii) *Outpatient cost-sharing.* Former members and dependents of former members are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(4) *Former spouses.* CHAMPUS beneficiary liability for former spouses eligible under the provisions set forth in § 199.3 of this part is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for payment of cost-sharing amounts the same as those required for former members and dependents of former members.

* * * * *

6. Section 199.8 is amended by revising paragraphs (a) and (d)(1) to read as follows.

**§ 199.8 Double coverage.**

(a) *Introduction.* (1) in enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

> A benefit may not be paid under a plan [CHAMPUS] covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan [Medicaid] administered under title 19 of the Social Security Act (42 U.S.C. 1396, *et seq.*).

(2) The provision in paragraph (a)(1) of this section is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(d) * * *

(1) *CHAMPUS and Medicare.* Under certain circumstances a CHAMPUS beneficiary can also be eligible for Medicare. In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, ''Hospital Insurance,'' of Medicare is involved, the Medicare ''lifetime reserve'' benefit must be used before CHAMPUS benefits may be used. The procedures to be followed for these circumstances are as follows.

(i) *Dependents of active duty members.* For dependents of active duty members, payment will be determined in accordance with paragraph (c) of this section.

(ii) *Medicare end stage renal disease beneficiaries.* In any case involving a Medicare end stage renal disease beneficiary as provided in § 199.3(f)(3)(viii), CHAMPUS secondary payments will be determined in accordance with paragraph (c) of this section.

(iii) *Medicare disabled beneficiaries.* In any case involving a Medicare disabled beneficiary as provided in § 199.3(f)(3)(ix), CHAMPUS payment is determined in accordance with paragraph (c) of this section.

* * * * *

7. Section 199.20 is amended by adding paragraph (d)(1)(iv) to read as follows.

**§ 199.20 Continued Health Care Benefit Program (CHCBP).**

* * * * *

(d) * * *

(1) * * *

(iv) An unmarried person who:

(A) Is placed in the legal custody of a member of former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(*1*) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(*2*) Is incapable of self-support because of a mental or physical incapacity which occurred while the

person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the members or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3 (b)(2).

Dated: December 15, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–33111 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 62 and 66

**[USCG 97 3112, CGD 97–018]**

**RIN 2115–AF45**

## Merger of the Uniform State Waterways Marking System With the United States Aids to Navigation System

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This proposed merger would eliminate distinctions between these two systems and create safer, less confusing waterways.

**DATES:** Comments are requested by February 23, 1998.

**ADDRESSES:** You may mail comments to the Docket Management Facility, [USCG–97–3112], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329 or Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages your participation in this rulemaking by the submission of written data, views, or arguments. Your comments should include your name and address, and identify this rulemaking [USCG–97–3112] and the specific section of this notice of proposed rulemaking to which each comment applies, along with the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. You may request a public hearing by submitting a request to the address under **ADDRESSES**. The request should include the reasons a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

### Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05–5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 2.02–25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10–1(b), allows the use of USATONS on state and non-navigable internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safewater;

2. Change the black USWMS buoy to the green USATONS buoy, and

3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties.

In 1993, NASBLA's Law Enforcement & Uniform Boating Laws Committee conducted a survey concerning the differences between the USWMS and the USATONS. The survey focused on the red and white striped buoy and the green versus black buoy. Of the 42 states that responded to the survey, 11 states indicated that they use the red and white striped buoy as defined by the USWMS, 15 states indicated that they use the USWMS's black buoy, and 35 states indicated that the USWMS should reflect the same characteristics as the USATONS.

On December 29, 1995, the Coast Guard published an advanced notice of proposed rulemaking (CGD 94–091) (60 FR 67345) to gauge public opinion toward conforming the USWMS with the USATONS. On March 27, 1996, a notice of proposed rulemaking was published (61 FR 13472) that, among other things, proposed eliminating the USWMS. The Coast Guard received adverse comments from ten states. Many of the comments stated concerns that elimination of the USWMS would eliminate regulatory markers and would cause the states to bear the costs of purchasing aids and revising boating manuals. As a result of these comments, the Coast Guard removed the proposal to eliminate the USWMS from the final rule. The Coast Guard then contacted the NASBLA and each state that commented and discussed their concerns.

Apart from the two distinctions explained above, a Coast Guard comparison of the USWMS and the USATONS showed that almost all of the requirements of the USWMS are contained in the USATONS. The differences between the two systems are:

1. The USMWS has the additional requirement of orange bands on regulatory buoys;

2. The USWMS allows for lights on mooring buoys whereas the USATONS is silent; and,

3. The USWMS uses the cardinal system of marking obstructions and the USATONS uses the lateral system of marking obstructions.

By adding to the USATONS the requirement for orange bands on regulatory buoys, by allowing lights on mooring buoys, and by allowing a phased-in implementation period for the marking of obstructions with the USATONS lateral system, the two systems could be merged. The Coast Guard proposes to make these changes to the USATONS, provide a five year phased-in implementation period, and merge the USWMS into the USATONS.

If, however, you think that a different phase-in period is necessary, please submit a comment (see **ADDRESSES**) explaining why a different phase-in period is necessary and a proposed length for this phase-in period.

**Discussion of Proposed Rule**

*Regulatory and Information Markers*

The USATONS provides a system for regulatory markers nearly identical to the USWMS. The only USWMS requirement not prescribed by the USATONS is that buoys have two horizontal orange bands, one just above the water line and one at the top of the buoy. The Coast Guard proposes to amend 33 CFR 62.33 to add the USWMS requirement of two horizontal orange bands to the USATONS.

*Channel Markers*

The USWMS black buoy would be replaced, via a phased-in process, with the green buoy required by the USATONS. The phase-in process would be linked to the aid's lifecycle to avoid unnecessary replacement costs to the states.

*Red-and-White Striped Buoy*

The meaning of the red-and-white striped buoy would change from the USWMS ''do not pass between the buoy and the nearest shore'' to the USATONS ''safewater all around.'' Obstructions now marked with the USWMS red-and-white striped buoy could be marked, via a phase-in process, with the USATONS' sidemark prescribed in 33 CFR 62.25(b), or with an isolated danger mark prescribed in 33 CFR 62.29.

*Cardinal Marks*

In the USWMS, white buoys with a red top band mean that the mariner can pass safely south or west of the buoy, and white buoys with a black top band mean that the mariner can pass safely north or east of the buoy. The USATONS does not contain cardinal marks, and areas presently marked with these USWMS aids could be replaced with the USATONS isolated danger mark prescribed in 33 CFR 62.29, or a side mark prescribed in 33 CFR 62.25(b).

*Mooring Buoys*

Unlike the USWMS, the USATONS is silent on prescribing lights on mooring buoys. The Coast Guard proposes to amend 33 CFR 62.35 to allow for slow flashing, white lights on mooring buoys.

*Numbers, Letters, or Words on Markers*

The guidance in the USATONS, 33 CFR 62.43 (a) & (b), is similar to that in the USWMS 33 CFR 66.10–25, so the merging of the two systems would not affect numbers, letters, or words on markers.

*Reflectors and Retroreflective Materials*

The USATONS guidance for the uses of retroreflective material, 33 CFR 62.43(c), is less restrictive than the USWMS guidance found in 33 CFR 66.10–30, so the merger would not require a change in the use of reflectors or retroflective material.

*Navigation Lights*

The USATONS requirements for the use of navigation lights, 33 CFR 62.45, is similar to that of the USWMS found in 33 CFR 66.10–35, so the merger would not affect the use of navigation lights.

*Size, Shape, Material, and Construction of Markers*

No specific guidance for size, shape, material and construction of markers exists in the USATONS. The USWMS wording on these items, found in 33 CFR 66.10–20, is not necessary and is not proposed for insertion into the USATONS.

*Ownership Identification*

The USWMS, in 33 CFR 66.10–40, allows for the discretionary use of ownership identification on aids to navigation. The USATONS does not prohibit use of ownership identification. Ownership identification, however, should not be placed on an aid in a way that would change the meaning of the aid to navigation. The Coast Guard proposes to add a section to the USATONS starting language to this effect.

*Changes to 33 CFR Subpart 66.05*

The merging of the USWMS with the USATONS would also require conforming editorial corrections to Subpart 66.05 entitled, ''State Aids to Navigation,'' to reflect the proposed changes.

*Changes to 33 CFR Subpart 66.10*

Sections 66.10–5, 66.10–10, 66.10–20, 66.10–25, 66.10–30, 66.10–40, and 66.10–45 are proposed for removal because the provisions of these sections are contained in the USATONS, or are proposed for insertion into the USATONS.

The only sections that will remain in subpart 66.10 will be the general section, the aids to navigation section, and that portion of the navigation lights section which refers to lights on cardinal marks. These sections may be used until the end of the five year implementation period.

General, Section 66.10–1

This section will be revised to reflect the merger of the two systems, the five year implementation period, and to remove references to deleted sections.

Aids to Navigation, Section 66.10–15

This section provides information concerning the marking of channels and the cardinal system of marking, and as such will remain until the end of the phase-in period.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Merging the USWMS with the USATONS, via a phased-in implementation period, will not impose an increased monetary burden on the States currently using the USWMS. There is currently no price difference between aids with the USWMS markings and aids with USATONS markings. Further, because the replacement of the aid is linked to its lifecycle, purchase of a USATON aid is not required until the end of the USWMS aid's lifecycle, any additional costs are eliminated.

Consequently, the Coast Guard believes that this rulemaking will not impose any additional costs on the states. If, however, you believe that this proposal will have an economic impact,

please submit a comment (see **ADDRESSES**) explaining why you think this proposal will have economic impact, and explain any alternatives you believe would eliminate the economic impact of this proposal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposal, if adopted, will have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The USWMS is a system that regulates state aids to navigation. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal would economically affect it.

**Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

**Collection of Information**

This proposal contains no increase in collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**Federalism**

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Pursuant to 14 U.S.C. 85, the Coast Guard, as delegated by the Secretary, Department of Transportation, has responsibility to create all regulations concerning aids to navigation for all waters subject to the jurisdiction of the United States. This proposal does not affect the states ability to prescribe regulations for its own internal non-navigable waters.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(23), (34)(a), and (34)(i) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Merging the USWMS with the USATONS would have no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR Part 62*

Navigation (water).

*33 CFR part 66*

Intergovernmental relations, Navigation (water). For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 62 and 66 as follows:

## PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

**Authority:** 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

**§ 62.1 [Amended]**

2. In § 62.1, redesignate paragraph (b) as paragraph (b)(1), and add a paragraph (b)(2) to read as follows:

**§ 62.1 Purpose.**

* * * * *

(b) * * *

(2) The regulations found in 33 CFR subpart 66.10 expire on [Insert date five years from the date of publication in the **Federal Register** of the final rule.], at which time the provisions of this part will apply.

* * * * *

**§ 62.21 [Amended]**

3. In § 62.21(a), add after the words ''The navigable waters of the United States'', the words '', and non-navigable state waters after [Insert date 5 years from publication in the **Federal Register** of the final rule.],''

4. In § 62.33, redesignate the introductory text as paragraph (a), redesignate existing paragraphs (a) through (d) as (a)(1) to (a)(4), and add a new paragraph (b) to read as follows:

**§ 62.33 Information and regulatory marks.**

* * * * *

(b) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands of international orange placed completely around the buoy circumference. One band shall be at the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

**§ 62.35 [Amended]**

5. In § 62.35 add the following words to the end of the text: ''Lighted mooring buoys may display a slow flashing white light.''

6. Add § 62.54 to Supart B to read as follows:

**§ 62.54 Ownership identification.**

Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

## PART 66—PRIVATE AIDS TO NAVIGATION

7. The authority citation for part 66 continues to read as follows:

**Authority:** 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

**§ 66.01–10 [Amended]**

8. In § 66.01–10 delete paragraph (b) and remove the paragraph designation (a).

9. Revise § 66,05–1 to read as follows:

**§ 66.05–1 Purpose.**

The purpose of the regulations in this subpart is to prescribe the conditions under which state governments may regulate aids to navigation owned by state or local governments, or private parties. With the exception of the provisions of subpart 66.10, which are valid until [Insert date five years from date of publication in the **Federal Register** of the final rule.], aids to navigation must be in accordance with the United States Aids to Navigation System in part 62 of this subchapter.

10. In § 66.05–5, revise the section heading and paragraph (b) to read as follows:

**§ 66.05–5 Definitions.**

* * * * *

(b) The term *Uniform State Waterway Marking System* (USWMS) means the system of private aids to navigation which may be operated in State waters.

Subpart 66.10, which describes the USWMS, expires on [Insert date five years from the date of publication in the **Federal Register** of the final rule.].

* * * * *

**§ 66.05–20(c)(3) [Amended]**

11. In § 66.05–20(c)(3) add to the beginning of the paragraph the words ''If prior to [Insert date five years from the date of publication in the **Federal Register** of the final rule.],'' and uncapitalized the word ''Specification''.

12. Revise § 66.10–1 to read as follows:

**§ 66.10–1 General.**

(a) Until [Insert date five years from date of publication in the **Federal Register** of the final rule.], the Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation shall be in accordance with the United States Aid to Navigation System, described in part 62 of this subchapter.

(b) The USATONS may be used in all U.S. waters under state jurisdiction, including non-navigable state waters.

**§ 66.10–5 [Removed]**

13. Remove § 66.10–5.

**§ 66.10–10 [Removed]**

14. Remove § 66.10–10.

**§ 66.10–20 [Removed]**

15. Remove § 66.10–20.

**§ 66.10–25 [Removed]**

16. Remove § 66.10–25.

**§ 66.10–30 [Removed]**

17. Remove § 66.10–30.

18. Revise § 66.10–35 to read as follows:

**§ 66.10–35 Navigation lights.**

(a) A red light shall only be used on a solid colored red buoy. A green light shall only be used on a solid colored black or a solid colored green buoy. White lights shall be used for all system buoy other buoys. When a light is used on a cardinal or a vertically stripped white and red buoy it shall always to quick flashing.

(b) [Reserved]

**§ 66.10–40 [Removed]**

18. Remove § 66.10–40.

**§ 66.10–45 [Removed]**

19. Remove § 66.10–45.

Dated: December 17, 1997.

**Ernest R. Riutta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.*

[FR Doc. 97–33466 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL158b; FRL–5900–4]**

### Approval and Promulgation of Implementation Plan; Illinois

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA proposes to approve a revision to the Illinois State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Illinois to implement the Federal general conformity requirements in the nonattainment and maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

**DATES:** Written comments on this proposed action must be received by January 22, 1998.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris (312) 353–8656.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 5, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator, Region V.*

[FR Doc. 97–33323 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA179–0052b; FRL–5911–3]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating industry. The intended effect of proposing approval of Mojave Desert Air Quality Management District Rule 1115 is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 22, 1998.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (Air-4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1226.

**SUPPLEMENTARY INFORMATION:** This document concerns Mojave Desert Air Quality Management District Rule 1115, Miscellaneous, Metal Part and Products Coating Operations, submitted to EPA on July 23, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 27, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97–33318 Filed 12–22–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CO–44–1–6866(b); FRL–5930–2]**

### Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas in Colorado designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS).

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 22, 1998.

**ADDRESSES:** Written comments on this action should be addressed to Jeff Houk at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following location: Air Programs, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

**FOR FURTHER INFORMATION CONTACT:** Jeff Houk at (303) 312–6446.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: September 28, 1995.

**Editorial note:** This document was received at the Office of the Federal Register December 17, 1997.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 97–33319 Filed 12–22–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 144 and 146

**[FRL–5939–1]**

### Federal Register Notice of Stakeholders Meeting on Revisions to the Underground Injection Control Regulations for Class V Injection Wells

**AGENCY:** Environmental Protection Agency.

**ACTION:** Announcement of stakeholders meetings.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) will hold public meetings on January 20, 1998 in Washington, DC and January 27 in Chicago, IL. The purpose of these meetings will be to gather information and collect opinions from parties who will be affected by or are otherwise interested in the Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells. Typically, Class V wells are shallow wells which inject a variety of fluids directly below the land surface. The Class V wells under consideration for new requirements include motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells in ground water-based source water protection areas. EPA will consider the comments and views expressed in these meetings in developing the proposed regulation. EPA is especially interested in seeking input from small entities and small entity representatives. EPA encourages the full participation of all stakeholders throughout this process.

**DATES:** The stakeholder meetings regarding the Revisions to the Underground Injection Control Regulations for Class V Injection Wells will be held on:

1. January 20, 1998, 9:30 a.m. to 3:30 p.m. EST in Washington, DC
2. January 27, 1998, 9:30 am to 3:30 pm EST in Chicago, IL

**ADDRESSES:** To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Jennifer Greenamoyer of EPA's Office of Ground Water and Drinking Water at (202) 260–7829. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served. Members of the public who cannot participate via conference call or in person may submit comments in writing by January 30, 1998 to Jennifer Greenamoyer, U.S. Environmental Protection Agency, 401 M Street, S.W. (4606), Washington, DC 20460 or E-mail to greenamoyer.jennifer@epamail.epa.gov. The stakeholder meetings will be held in the following locations:

1. Washington Information Center, 401 M Street, S.W., Room 3, Washington, DC 20460
2. EPA, Region V, Ralph Metcalfe Federal Building, Lake Michigan Room (12th Floor), 77 West Jackson Blvd., Chicago, IL 60604

**FOR FURTHER INFORMATION CONTACT:** For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Jennifer Greenamoyer, U.S. EPA at (202) 260–7829.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency is developing revisions to the Underground Injection Control

Regulations for Class V Injection Wells (40 CFR parts 144 and 146) to address the risk posed by Class V injection wells to drinking water supplies. EPA is considering changes to the Class V Underground Injection Control regulations that would add new requirements for relatively high-risk Class V wells in areas near drinking water supplies. Under consideration is a ban on Class V motor vehicle waste disposal wells and large-capacity cesspools located in ground water-based source water protection areas being delineated by States under the 1996 Amendments to the Safe Drinking Water Act. In addition, fluids released in Class V industrial waste disposal wells in ground water-based source water protection areas could be required to meet certain standards of quality.

EPA is considering proposing these new requirements because available information shows that Class V motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells pose a high risk of ground water contamination. Targeting the requirements to those wells near ground water-based drinking water supplies would achieve substantial protection of underground sources of drinking water. The rule addressed in this notification is being developed in response to a January 28, 1997 consent decree with the Sierra Club Legal Defense Fund and has a court deadline of June 18, 1997 for proposal and July 31, 1999 for final.

**Elizabeth Fellows,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 97–33325 Filed 12–22–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 799

**[OPPTS–42198A; FRL–5762–9]**

**RIN 2070–AC76**

### Testing Consent Order and Export Notification Requirements for 1,1,2-Trichloroethane

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was 1,1,2-trichloroethane (CAS No. 79–00–5). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing 1,1,2-trichloroethane from the HAP Task Force. In a previous document EPA solicited interested parties to monitor or participate in negotiations on an ECA for 1,1,2-trichloroethane. EPA is proposing that if an ECA is successfully concluded for 1,1,2-trichloroethane, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add 1,1,2-trichloroethane to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of 1,1,2-trichloroethane, all exporters of 1,1,2-trichloroethane, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

**DATES:** Written comments on this proposed rule must be received by EPA on or before January 27, 1998.

**ADDRESSES:** Each comment must bear the docket control number, OPPTS–42198A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

**FOR FURTHER INFORMATION CONTACT:** *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

*For technical information*: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Electronic Availability

*Internet:* Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

#### II. Development of Enforceable Consent Agreement for 1,1,2-Trichloroethane

1,1,2-Trichloroethane was one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for 1,1,2-trichloroethane was submitted by the HAP Task Force to EPA on November 25, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the HAP Task Force on June 26, 1997. The HAP Task Force responded on July 31, 1997, that it has a continued interest in pursuing the ECA process for 1,1,2-trichloroethane. EPA has decided to proceed with the ECA process for 1,1,2-trichloroethane. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of 1,1,2-trichloroethane in the **Federal Register** of December 19, 1997. The procedures

for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for 1,1,2-trichloroethane is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

## III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for 1,1,2-trichloroethane, the publication of the Order in the **Federal Register** would add 1,1,2-trichloroethane to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of 1,1,2-trichloroethane, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, 1,1,2-trichloroethane).

2. The name and address of the exporter.

3. The country(ies) of import.

4. The date(s) of export or intended export.

5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

## IV. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42198A. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42198A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

## V. Regulatory Assessment Requirements

### *A. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, ''Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b),'' OPPT/ETD/RIB, June 1992, contained in the record for the HAPs rulemaking (OPPTS–42187). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for 1,1,2-trichloroethane would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

### *B. Executive Order 12866; Executive Order 12898; Executive Order 13045*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive order does not apply to actions expected to have an economic impact of less than $100 million.

### *C. Paperwork Reduction Act*

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been

approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hours per response.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

**List of Subjects in 40 CFR Part 799**

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding 1,1,2-trichloroethane to the table in CAS number order to read as follows:

**§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.**

* * * * *

| CAS Number | Substance or mixture name | Testing | FR Publication Date |
|---|---|---|---|
| * | * * | * * | * * |
| 79–00–5 | 1,1,2-Trichloroethane ..... | Health effects ..... | [Insert date of final rule]. |
| * | * * | * * | * * |

* * * * *

[FR Doc. 97–33449 Filed 12–22–97; 8:45 am]
**BILLING CODE 6560–50–F**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 799

**[OPPTS–42197A; FRL–5762–8]**

**RIN 2070–AC76**

### Testing Consent Order and Export Notification Requirements for Ethylene Dichloride

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was ethylene dichloride (CAS No. 107–06–2). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing ethylene dichloride from the HAP Task Force. In a previous document published EPA has solicited interested parties to monitor or participate in negotiations on an ECA for ethylene dichloride. EPA is proposing that if an ECA is successfully concluded for ethylene dichloride, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add ethylene dichloride to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of ethylene dichloride, all exporters of ethylene dichloride, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

**DATES:** Written comments on this proposed rule must be received by EPA on or before January 27, 1998.

**ADDRESSES:** Each comment must bear the docket control number, OPPTS–42197A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

**FOR FURTHER INFORMATION CONTACT:** *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202)

554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

*For technical information* : Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Electronic Availability

*Internet:* Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register** —Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

## II. Development of Enforceable Consent Agreement for Ethylene Dichloride

Ethylene dichloride was one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for ethylene dichloride was submitted by the HAP Task Force to EPA on November 25, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the HAP Task Force on June 26, 1997. The HAP Task Force responded on July 31, 1997, that it has a continued interest in pursuing the ECA process for ethylene dichloride. EPA has decided to proceed with the ECA process for ethylene dichloride. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of ethylene dichloride in the **Federal Register** of December 19, 1997. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for ethylene dichloride is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

## III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for ethylene dichloride, the publication of the Order in the **Federal Register** would add ethylene dichloride to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of ethylene dichloride, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, ethylene dichloride).

2. The name and address of the exporter.

3. The country(ies) of import.

4. The date(s) of export or intended export.

5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

## IV. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42197A. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42197A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

## V. Regulatory Assessment Requirements

### *A. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, ''Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b),'' OPPT/ETD/RIB, June 1992, contained in the record for the HAPs

rulemaking (OPPTS–42187). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for ethylene dichloride would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

*B. Executive Order 12866; Executive Order 12898; Executive Order 13045*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive order does not apply to actions expected to have an economic impact of less than $100 million.

*C. Paperwork Reduction Act*

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hours per response.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

**List of Subjects in 40 CFR Part 799**

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding ethylene dichloride to the table in CAS number order to read as follows:

**§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.**

* * * * *

| CAS Number | Substance or mixture name | Testing | FR Publication Date |
|---|---|---|---|
| * | * * | * * | * * |
| 107–06–2 | Ethylene dichloride ..... | Health effects ..... | [Insert date of final rule]. |
| * | * * | * * | * * |

* * * * *

[FR Doc. 97–33448 Filed 12–22–97; 8:45 am]
BILLING CODE 6560–50–F

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AE06**

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Preble's Meadow Jumping Mouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** The Fish and Wildlife Service provides notice that the comment period on the Service's proposal to list the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) as endangered throughout its range (62 FR 14093, March 25, 1997) is reopened as of December 23, 1997. The Service is soliciting any new information or comments on the proposed listing of the Preble's meadow jumping mouse. The Service notes that information and data collected since the publication of the proposed rule has been or will be provided to the Service, and will become part of the record for the Service's evaluation of the proposed listing. This information includes surveys that evaluate the status of the mouse at various locations and a report on habitat requirements.

**DATES:** The public comment period is reopened for 30 days. All comments should be received on or before January 22, 1998.

**ADDRESSES:** Written comments and materials should be sent to the Colorado Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for inspection, by appointment, during normal business hours, at the Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

**FOR FURTHER INFORMATION CONTACT:** LeRoy W. Carlson, Colorado Field Supervisor, telephone 303/275–2370 (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

### Background

The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development have resulted in concern over its continued existence.

On March 25, 1997, the Service published a proposed rule (62 FR 14093) to list the Preble's meadow jumping mouse as an endangered species without critical habitat. On May 5, 1997, the Service extended the comment period through July 28, 1997, and announced three public hearings, which were held on May 19, 21, and 22, 1997 (62 FR 24387). The Service received additional written comments during that comment period, which are being reviewed by the Service in making its final determination whether to list the Preble's meadow jumping mouse as endangered. The Service's conclusion must include an evaluation of the best scientific and commercial data available, i.e., species abundance, new data received during the comment period, re-evaluation of existing data, and efforts being taken to protect the species.

To assist in its analysis of species status, the Service requests any comments that have not already been submitted, which provide new information or data, and/or reflect the information and data that has become available since the publication of the proposed rule. The Service (see **ADDRESSES**) can provide guidance on the availability of additional information.

Written comments may be submitted on or before January 22, 1998, to the Service office identified in the **ADDRESSES** section above. All comments must be received before the close of the comment period to be considered.

Legal notices announcing reopening of the comment period are being published in newspapers concurrently with this **Federal Register** notice.

**Author:** The author of this notice is Peter Plage, Colorado Field Office (see **ADDRESSES** above), telephone 303/275–2370.

**Authority:** Authority for this action is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 17, 1997.

**Terry T. Terrell,**

*Deputy Regional Director, Fish and Wildlife Service, Region 6, Denver, Colorado.*

[FR Doc. 97–33408 Filed 12–22–97; 8:45 am]
BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 971208298–7298–01; I.D. 112097B]**

## Groundfish Fishery of the Bering Sea and Aleutian Islands; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; correction.

**SUMMARY:** NMFS is correcting the date by which comments must be received about the proposed 1998 harvest specifications for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The correct date is January 14, 1998.

**DATES:** Comments must be received by January 14, 1998.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

A proposed rule was published in the **Federal Register** on December 15, 1997 (62 FR 65638), that set forth the proposed annual TACs, prohibited species catch allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota reserve.

### Need for Correction

As published, the proposed rule invited comments and contained the date by which comments must be received. The date is in error and NMFS is hereby correcting that error.

### Correction of Publication

In the December 15, 1997, issue of the **Federal Register** (62 FR 65638), in the third column under the **DATES** heading, the wording should be corrected to read as follows:

**DATES:** Comments must be received by January 14, 1998.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 17, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–33436 Filed 12–22–97; 8:45 am]
BILLING CODE 3510–22–F

# Notices

**Federal Register**

Vol. 62, No. 246

Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, January 9, 1998, 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

**STATUS:**

### Agenda

I. Approval of Agenda
II. Approval of Minutes of December 5, 1997 Meeting
III. Announcements
IV. Staff Director's Report
V. Project Planning
VI. Future Agenda Items.

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications (202) 376–8312.

**Stephanie Y. Moore,**

*General Counsel.*

[FR Doc. 97–33531 Filed 12–19–97; 9:23 am]

**BILLING CODE 6335–00–M**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).
*Title:* NOAA's Teacher At Sea Program.
*Agency Form Number:* None.
*Type of Request:* Reinstatement of a previously approved collection.
*Burden:* 309 hours.
*Number of Respondents:* 375.
*Avg. Hours per Response:* Ranges between 15 minutes and 2 hours depending on the requirement.
*Needs and Uses:* The Teacher At Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels. The respondents are educators and must provide information about themselves and their teaching situation, provide 2 recommendations, medical history, and submit a follow-up report with ideas for classroom applications.
*Affected Public:* Individuals.
*Frequency:* On occasion.
*Respondent's Obligation:* Required to obtain a benefit.
*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information should be sent within 30 days of this Notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: December 18, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–33440; Filed 12–22–97; 8:45 am]

**BILLING CODE: 3510–22–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/18/97–12/17/97

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| MAY CORPORATION ..... | 250 PRAIRIE CENTER DRIVE, MINNEAPOLIS, MN 55344. | 11/24/97 | WHEELED RECLINERS. |
| GENERAL SWITCHGEAR, INC | 14729 SPRING AVENUE, SANTA FE SPRINGS, CA 90670. | 12/02/97 | SWITCHGEAR ELECTRICAL POWER DISTRIBUTION UNITS. |
| CHILD CRAFT INDUSTRIES, INC. | 501 EAST MARKET STREET, SALEM, IN 47167. | 12/03/97 | HARDWOOD TWIN BUNK BEDS, CHESTS, HUTCHES, NIGHTSTANDS AND CHANGING TABLES FOR BEDROOMS. |
| PRECO MANUFACTURING, INC. | 8837 BREWERTON ROAD, BREWERTON, NY 13029. | 12/04/97 | STERLING SILVER JEWELRY. |
| B & L PLASTICS, INC ..... | 99 HARTFORD AVENUE, PROVIDENCE, RI 02909. | 12/04/97 | PLASTIC BLOW MOLDED BOTTLES, CARBOYS AND BELLOWS. |
| EDGEWOOD FINE LOG STRUCTURES, LTD. | 11365 NORTH GOVERNMENT WAY, HAYDEN, ID 83835. | 12/10/97 | PREFABRICATED LOG HOMES. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/18/97–12/17/97—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| PRECISION DIE CUTTING, INC. | 27595 S.W. 95TH AVENUE, WILSONVILLE, OR 97070. | 12/11/97 | COMPUTER PARTS. |
| CORSAIR NECKWEAR COMPANY, INC. | 2900–A ELYSIAN FIELDS, AVENUE, NEW ORLEANS, LA 70122. | 12/11/97 | NECKTIES. |
| TRI-CITIES MANUFACTURING, INC. | P.O. BOX 558, HIGHWAY 43 SOUTH, TUSCUMBIA, AL 35674. | 12/11/97 | ELECTRONIC ASSEMBLIES FOR MOTOR VEHICLES REQUIRING A FAN—HEATERS, AIR CONDITIONERS, RADIATORS. |
| DEPENDABLE GLASS WORKS, INC. | 509 EAST GIBSON STREET, COVINGTON, LA 70434. | 12/12/97 | GLASS TABLE TOPS, CERAMIC PEDESTALS AND CUT GLASS PANES. |
| J & M INDUSTRIES, INC ..... | 300 PONCHATOULA PARKWAY, PONCHATOULA, LA 70454. | 12/17/97 | TEXTILE BAGS. |
| GREENWOOD MOP & BROOM, INC. | 119 GRENOLA AVENUE, GREENWOOD, SC 29648. | 12/17/97 | BROOMS MADE OF BROOMCORN. |
| CIRCUIT MASTER ASSEMBLY, INC. | 5443 115TH AVENUE, NORTH, CLEARWATER, FL 33760. | 12/17/97 | PRINTED CIRCUIT BOARDS. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: December 16, 1997.

**Anthony J. Meyer,**

*Coordianator, Trade Adjustment and Technical Assistance.*

[FR Doc. 97–33410 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–24–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 942]**

## Grant of Authority for Subzone Status, JVC America, Inc. (Videotape Products), Tuscaloosa County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, for authority to establish special-purpose subzone status at the videotape and videocassette manufacturing plant of JVC America, Inc., in Tuscaloosa County, Alabama, was filed by the Board on March 25, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 23–97, 62 FR 17146, 4–9–97); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants authority for subzone status at the videotape and videocassette manufacturing plant of JVC America, Inc., located in Tuscaloosa County, Alabama (Subzone 98C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–33468 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 944]**

## Expansion of Foreign-Trade Zone 143, Sacramento, California Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, an application from the Sacramento-Yolo Port District, grantee

of Foreign-Trade Zone 143, for authority to expand FTZ 143-Site 1 (to 686 acres) and Site 2 (to 1,280 acres) in the Sacramento, California, area, was filed by the Board on March 19, 1997 (FTZ Docket 17–97, 62 FR 15459, 4/1/97);

*Whereas, notice inviting public comment was given in* **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–33470 Filed 12–22–97; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 941]**

### Expansion of Foreign-Trade Zone 29 (Louisville, Kentucky) and Approval for Manufacturing Authority (Military Ordnance)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* an application from the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, Louisville, Kentucky, for authority to expand FTZ 29 to include additional sites and for authority to manufacture/refurbish military ordnance under FTZ procedures within FTZ 29, was filed by the Board on September 26, 1996 (FTZ Docket 71–96, 61 FR 52909, 10/9/96);

*Whereas,* notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand FTZ 29 and for authority to manufacture military ordnance under FTZ procedures is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–33467 Filed 12–22–97; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 943]**

### Expansion of Foreign-Trade Zone 46, Cincinnati, Ohio, Area, Approval of Manufacturing Activity Within FTZ 46, Cincinnati Milacron, Inc. (Horizontal Turning/Grinding Machinery)

Pursuant to its authority under the Foreign-Trade Zones Act (the Act) of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* an application from the Greater Cincinnati Foreign Trade Zone, Inc. (GCFTZ), grantee of FTZ 46, for authority to expand its general-purpose zone in the Cincinnati, Ohio, area, to include a second site located in Cincinnati, Ohio, owned by Cincinnati Milacron, Inc. (CM), and for authority, on behalf of CM, to manufacture horizontal turning and grinding machinery and metalworking consumable products under FTZ procedures within FTZ 46 (filed 5–23–97, FTZ Doc. 42–97, 62 FR 30567, 6–4–97);

*Whereas,* notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby authorizes the grantee to expand its zone as requested in the application, and approves the request for manufacturing authority, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December, 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–33469 Filed 12–22–97; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** December 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Commerce has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

**Initiaiton of Reviews**

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 1998.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| South Korea: Circular Welded Non-Alloy Steel Pipe A–580–809 | 11/1/96–10/31/97 |
| Hyundai Pipe Co., Ltd. | |
| Korea Iron & Steel Co., Ltd. | |
| SeAH Steel Corporation, Ltd. | |
| Shinbo Steel Co., Ltd. | |
| The People's Republic of China: Fresh Garlic A–570–831 | 11/1/96–10/31/97 |
| Fook Huat Tong Kee Pte. Ltd. | |
| **Countervailing Duty Proceedings** | |
| None. | |
| **Suspension Agreements** | |
| Singapore: Certain Refrigeration Compressors C–559–001 | 4/1/96–3/31/97 |

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 17, 1997.

**Richard W. Moreland,**

*Acting Deputy Assistant Secretary, Group II, Import Administration.*

[FR Doc. 97–33471 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 080897A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge) has been issued to the California Department of Transportation (Caltrans) for a period of 1 year.

**DATES:** This authorization is effective from December 16, 1997, through December 15, 1998.

**ADDRESSES:** The application, authorization, and environmental assessment (EA), and a list of references used in this document are available by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or the Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by telephoning one of the following contacts.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980–4016.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA provides an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as: ≥...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine

mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) provides a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue, or deny issuance of, the authorization.

**Summary of Request**

On July 7, 1997, NMFS received an application from Caltrans, requesting an authorization for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge. Accordingly, NMFS published a notice in the **Federal Register** on September 3, 1997 (62 FR 46480), requesting comments on NMFS' proposal to authorize Caltrans, under section 101(a)(5)(D) of the MMPA, to take, by harassment, small numbers of marine mammals incidental to seismic retrofit construction of the Bridge.

The Bridge will be seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to begin in December 1997 and extend through December 2001. A detailed description of the work planned is contained in Caltrans' 1996 Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project. Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. The construction duration for the seismic retrofit of foundation and towers on Piers 52 through 57 will be approximately 7 to 8 months. Because of work restrictions and mitigation measures, the seismic retrofit construction in this area is expected to be completed within two authorized work periods.

As the seismic retrofit construction between Piers 52 and 57 may potentially result in disturbance of pinnipeds at Castro Rocks, an MMPA authorization is warranted.

**Comments and responses**

A notice of receipt of the application and proposed authorization was published on September 3, 1997 (62 FR 46480), and a 30-day public comment period was provided on the application and proposed authorization. In addition a press release was issued on September 10, 1997, and a public notice was published in a newspaper of general circulation in the San Francisco Bay area. During the comment period, comments were received from the Marine Mammal Commission (MMC), Caltrans, and the California Law Project (CLP). Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here.

*Comments on MMPA Authorizations*

*Comment 1*: CLP was of the opinion that the purpose and intent of the IHA provision in section 101(a)(5)(D) of the MMPA is to allow incidental marine mammal taking when the harassment will be ''short-term and non-lethal.'' Because neither the Caltrans application nor the EA made clear that the seismic retrofit project would have ''short-term and non-lethal'' impacts to harbor seals, a section 101(a)(5)(D) authorization under the MMPA would be inappropriate. CLP notes that the project would extend beyond the 1-year time limit specified in section 101(a)(5)(D) and that subsequent renewals would be necessary. CLP notes that Congress intended that projects of this length (up to 5 consecutive years) be permitted under the more protective provisions of section 101(a)(5)(A).

*Response*: NMFS does not agree. When implementing section 101(a)(5)(D) in 1994, the House of Representatives noted: ''It is not the Committee's intent to weaken any of the existing standards which protect marine mammals and their habitats from incidental takes under this section. However, the Committee recognizes that the regulatory agencies must be afforded some procedural flexibility in order to streamline the review of authorizations under this section.'' (H. Rept. 103-439, 103rd Congress, 2nd Sess., pp. 29, 30.) Provided the taking is not expected to result in the serious injury or mortality of marine mammals, a section 101(a)(5)(D) authorization is appropriate. That issue is addressed below.

The U.S. Congress did not intend to limit incidental harassment authorizations to activities that would take place in a single year or less, only that the authorization would be valid for no more than 1 year. After that period, the activity participants could reapply. This interpretation of the statute is supported by the statement ''The Committee notes that, in some instances, a request will be made for an authorization identical to one issued in the previous year. In such circumstances, the Committee expects the Secretary to act expeditiously in complying with the notice and comment requirements.'' (H. Rept. 103-439, 103rd Congress, 2nd Sess., p. 29.)

*Comment 2*: CLP believes that without more protective mitigation, injury or mortality of harbor seals could occur, and, therefore, the use of an IHA may be inappropriate because no serious injury or death would be authorized.

*Response*: NMFS disagrees that the issuance of an IHA under section 101(a)(5)(D) is inappropriate for this project. In the IHA, NMFS is requiring Caltrans to expand several of its mitigation measures to further decrease the potential for serious injury or mortality of harbor seals during construction activities (see Comments on Mitigation and Mitigation Measures). Moreover, the monitoring and reporting programs have been greatly expanded (see Monitoring and Reporting sections). NMFS expects the mitigation requirements of the IHA to preclude harbor seals from serious injury or mortality and will result in the least practicable impact to harbor seals from construction activities. *Comment 3*: CLP recommends that NMFS require that Bridge retrofit construction be halted if any ''harmful disturbance'' occurs during the pupping or molting season.

*Response*: NMFS will not be requiring Caltrans to stop work if certain threshold seal disturbances are observed because certain construction operations cannot be stopped in progress without jeopardizing the structural integrity of the Bridge and NMFS does not expect incidental harassment of harbor seals from construction activities to have more than a negligible impact on the harbor seal population. Nevertheless, if any unauthorized marine mammal taking (serious injury or mortality) occurs as a result of seismic retrofit construction activities, Caltrans will be subject to the penalties of the MMPA. NMFS will, however, reevaluate the appropriateness of the IHA before Caltrans reapplies for a new IHA next year, based on required reports (see Reporting section).

*Comment 4*: CLP concludes that harbor seals that inhabit San Francisco Bay (SFB) are a ''population stock'' under the MMPA and believes NMFS

should consider the impacts of the retrofit construction relative to the SFB population stock.

*Response*: NMFS disagrees that the best available information indicates that harbor seals that inhabit SFB are a ''population stock'' under the MMPA. Studies have shown that adult harbor seals in SFB have a high degree of site fidelity as indicated by (1) high occurrence of red pelaged seals in SFB; (2) organochlorine containment levels are higher in harbor seals that haul-out in SFB; and (3) limited movement of adult harbor seals tagged in SFB to nearby coastal areas. Nevertheless, data are not available that demonstrate that harbor seal pups born at haul-out sites in SFB return to breed and pup at the same site where they were born. Thus, at this time, scientists do not know whether pups born in SFB show the same degree of site fidelity as adults or whether they utilize other haul-outs either within SFB or in nearby coastal areas when they mature. Studies of adult harbor seals tagged in SFB indicate that the level of movement to nearby coastal areas (20 percent) (Kopec and Harvey 1995, Harvey and Torok 1994) would be sufficient to preclude isolation if those seals were breeding with seals found along the coast (Harvey, J., Moss Landing Marine Laboratory, pers. commun., November 1997). Moreover, genetic studies have not been conducted to determine whether seals in SFB have unique genetic variation or genotypes. In contrast, NMFS has separated harbor seals within inland waters of Washington as a population stock under the MMPA based on (1) extremely low mixing with coastal harbor seals, (2) pollutant loads, (3) fishery interactions, (4) existence of unique haplotypes in inland Washington harbor seals, and (5) differences in mean pupping dates. The best available information does not demonstrate that harbor seals in SFB are a unique biological population (Harvey, J., pers. commun., 1997; Allen, S., NPS, pers. commun., November 1997; Hanan, D., CDFG, pers. commun., November 1997). For these reasons, NMFS does not consider harbor seals in SFB to be a population stock under the MMPA.

Under section 117 of the MMPA, NMFS is required to prepare stock assessment reports (SARs) for every marine mammal stock that occurs in U.S. waters. NMFS has convened two expert working groups (NMFS and Non-NMFS scientists/managers) to draft guidelines for preparing SARs (Barlow *et al.* 1995, Wade and Angliss 1997). Furthermore, SARs are available for public review and comment and are reviewed by regional scientific review groups (all non-NMFS scientists). Using these guidelines and in consultation with the Pacific Scientific Review Group, NMFS published a SAR that considers harbor seals that occur in California as a separate population stock (Barlow *et al.* 1995). This SAR reports a population abundance estimate of 34,554 harbor seals. This stock of harbor seals is not considered ''depleted'' or ''strategic'' under the MMPA or listed as an endangered or threatened species under the Endangered Species Act. For these reasons, NMFS is considering the impact of seismic retrofit construction of the Bridge on the California harbor seal stock.

*Harbor Seal Concerns*

*Comment 5*: CLP believes the **Federal Register** notice's statement ''evidence to date has not indicated that anthropogenic disturbances have resulted in increased mortality to harbor seals'' in 62 FR 46480 (September 3, 1997), is incorrect as several studies document this. The Boles and Stewart (1980) study merely describes behavior patterns consistent with one found with Bay harbor seals and does not support a finding that human disturbance does not result in serious harm or mortality.

*Response*: In retrospect, NMFS believes the statement made was too broad and it should reflect that, to date, studies have not indicated that airborne anthropogenic noise has resulted in increased harbor seal mortality. NMFS would be interested in specific harbor seal studies that indicate otherwise. It should be recognized that most of this information is from studies on the impact of noise from rocket launches and sonic booms on harbor seals and sea lions in the California Channel Islands and, in the past, has been mostly qualitative. Upcoming studies have been redesigned to be more quantitative.

*Comment 6*: CLP states that there is no evidence that seals will adapt to construction, and harbor seals have abandoned sites in SFB. Harbor seals hauling-out in areas of frequent but non-threatening disturbances show a relatively higher tolerance for such events when compared with more isolated areas where disturbance is rare. Observations of harbor seals at Castro Rocks found that seals flush easily in response to human disturbance.

*Response*: NMFS agrees that there is no scientific evidence that demonstrates harbor seals will acclimate to disturbance from construction activities. NMFS also believes that seals are likely to acclimate to activities they perceive as non-threatening. Although harbor seal colonies have abandoned haul-out sites in SFB, colonies also have acclimated to various levels of human activity. In particular, despite the regular exposure to traffic noises from the Bridge, vessel traffic from commercial activities at the Chevron Long Wharf, and vessel traffic from recreational boating and commercial shipping in the area, harbor seals continue to haul-out, pup, breed, and molt at Castro Rocks. For these reasons, NMFS believes that harbor seals at Castro Rocks may acclimate to certain seismic retrofit construction activities if they perceive these activities as non-threatening.

*Comment 7*: CLP believes that seal counts by Caltrans personnel during June 1994/1996 misrepresent the number of pups using Castro Rocks.

*Response*: Presentation of the seal counts by Caltrans personnel during June 1994 and 1996 was not intended to establish the period in which pups are born at Castro Rocks. The best available information indicates that in SFB harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and by the first week of June, the majority of the pups are weaned (Kopec, D., Romberg Tiburon Centers, pers. commun., November 1997; (i.e., Kopec 1997)).

*Comment 8*: The statement in the **Federal Register** notice (62 FR 46480, September 3, 1997) that ''haul-out groups are temporary, unstable aggregations'' does not accurately represent the current knowledge of harbor seal population dynamics. Seals in SFB show strong site fidelity.

*Response*: The statement is from Sullivan (1982) and is not refuted by Kopec and Harvey (1995). However, because harbor seals show strong site fidelity (Kopec and Harvey 1995, Stewart and Yochem 1994), the statement may be misleading.

*Comment 9*: The finding of Bowles and Stewart (1980) referenced in the **Federal Register** notice (62 FR 46480) that ''harbor seals tendency to flee...decreased during the pupping season,'' does not support the claim that young seals are protected from '' ...the startle response of the herd.''

*Response*: Reviewing the referenced source, NMFS has determined that there is no evidence that harbor seals are less sensitive to disturbance during the pupping season than at other times. This agrees with Kopec's observations (Kopec 1997). See Mitigation Measures.

*Comments on Mitigation Measures*

*Comment 10*: CLP had several concerns regarding NMFS' conclusions on the impact of disturbance on molting harbor seals and the appropriateness of Caltrans' proposed work closure period

(February 1–June 30). For example, CLP believes there is no scientific evidence to support the conclusion in the **Federal Register** notice (62 FR 46480, September 3, 1997) that harbor seals have evolved adaptive mechanisms to deal with natural disturbance from predators and seabirds during the molt. CLP states this is supported by the behavior of harbor seals to haul out in very isolated locations precisely to avoid disturbance, and it is not factual to suggest that seabirds cause seals to flush into the water. Existing as they do at the top of the food web, CLP states, harbor seals using Castro Rocks have no natural predators. CLP states that the very sensitive molting season of seals using Castro Rocks extends to at least early or mid-August. Caltrans' application and the EA failed to adequately assess the project's impacts to molting seals during July and August. For these reasons, CLP recommended that the Closure Period be extended to include the entire molt.

*Response*: The process of molting is an important and energetically demanding part of a seal's annual cycle (Leatherwood *et al.* 1992). While on land, harbor seals bask in the sun to warm their body surface and promote flow of blood to the skin which is essential for new hair growth. While little is known about the effect of disturbance on molting harbor seals, energetic costs are probably higher for seals that spend more time in the water during the molt since a seal's metabolic rate increases in the water (DeLong, R., NMFS, pers. commun., November 1997). Nevertheless, NMFS believes that it is likely that harbor seals have evolved adaptive mechanisms to deal with exposure to the water during the molt for the following reasons. First, on some harbor seal haul-outs during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Second, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, due to the large amount of time hauled-out harbor seals allocate to scanning their environment, it is likely that terrestrial predation was an important selection pressure during the early evolution of harbor seal behavior (Da Silva and Terhune 1988) and could be the reason why hauled-out harbor seals appear to be so sensitive to disturbance. Disturbance would not have been isolated to only non-molting seasons and thus, harbor seals most likely evolved mechanisms to tolerate exposure to water during the molt. Some harbor seal colonies in California continue to be subject to disturbance from wildlife such as seabirds (Hanan, D. pers. commun., 1997) and human activities. If the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs.

The primary objectives of the Kopec and Harvey (1995) study was to determine the population dynamic and movements, investigate the concentration of pollutants, and assess the health of harbor seals within and near SFB. Although the number of molting seals was recorded during most field observations, molt observations were incidental to Kopec and Harvey's (1995) primary census counts (Kopec 1997). Thus, although Kopec and Harvey (1995) refer to the ''reproductive/molting'' period at Castro Rocks as occurring between March-July, no data are presented to support this conclusion. Moreover, they report that ''In San Francisco Bay, pupping occurs from March to May, and molt in June. This corresponds with the greatest number of harbor seals counted in * * *Castro Rocks.'' For these reasons, NMFS concluded that the proposed Closure Period (February 1-June 30) would encompass all of the pupping and breeding season, and nearly the entire harbor seal molting season at Castro Rocks.

Recently available unpublished information indicates that the peak number of actively molting harbor seals occurs in early July at Castro Rocks (Kopec 1997), which coincides with the peak of the molt for harbor seals near and within SFB (S. Allen, pers. commun., 1997). By early August, only five to seven percent of the seals are actively molting at Castro Rocks (Kopec 1997).

Based on new information on harbor seals molting at Castro Rocks, NMFS has expanded the Closure Period to include the entire month of July (see Mitigation Measures). The modified Closure Period (February 15 - July 31) is designed to encompass the entire harbor seal pupping and breeding seasons and nearly the entire molting season at Castro Rocks (see Mitigation Measures). This represents a period of five and one-half months in which no work may be conducted on the substructure, towers, or superstructure between Piers 52 and 57, inclusive (please see related comment 11 below). Any harbor seals that are still molting when work begins after the Closure Period are likely to utilize other SFB haul-out sites if they are substantially disturbed by construction activities in the area (DeLong, R., pers. commun., 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Expanding the Closure Period further would result in another season of work near Castro Rocks and in prolonged disturbance to seals utilizing Castro Rocks. The Closure Period could be expanded during the second year of the project if monitoring results indicate that impacts may be greater than negligible.

*Comment 11*: CLP believes that the proposed seasonal restrictions are not sufficient to protect seals during the earlier pupping and nursing season because work will be allowed to continue on the superstructure and could negatively impact seals during the spring pupping and summer molting seasons. Furthermore, CLP notes that the IHA notice contradicts the EA's superstructure seasonal closure period. For these reasons, CLP recommends that the work closure area include a prohibition on superstructure work between Piers 52 and 57.

*Response*: NMFS agrees and, as mentioned in comment 10 above, has modified the Closure Period to include all retrofit construction activities on the substructure (e.g., piers), towers, and superstructure between Pier's 52 and 57, inclusive (see Mitigation Measures). Since the Closure Period has been expanded to include nearly the entire molting season (see above), NMFS has modified the Closure Period to begin on February 15, instead of February 1. In SFB, harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and, by the first week of June, all pups are weaned (Kopec and Harvey 1995). Thus, the Closure Period will include the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas. As mentioned previously, imposing a 6-month Work Closure Period (i.e., February 1–July 31) would likely result in another season of work near Castro Rocks and in prolonged disturbance to seals at Castro Rocks.

*Comment 12*: The CLP believes that the size of Caltrans' proposed exclusion zone around Castro Rocks is arbitrary and inconsistent with both the existing scientific literature or reported reactions and actual observations of disturbance behavior at Castro Rocks. For these

reasons, CLP recommends that the exclusion zone be expanded to a minimum of 200 m (656 ft) on all sides of Castro Rocks and that the zone be expanded if monitoring indicates seals are adversely effected by boats traveling outside the zone boundaries.

*Response*: The purpose of the exclusion zone is to establish an area around Castro Rocks in which retrofit construction activity will be prohibited during the pupping, breeding, and the majority of the molting season (the Work Closure Period) to minimize the impacts to seals during the sensitive periods of their life cycle. Caltrans originally proposed that the exclusion zone be located between the Bridge center line, between Piers 52 and 57, and extend to 200 ft (61 m) south of the most southwestern portion of Castro Rocks.

Reactions of harbor seals to disturbance depends upon the distance of the activity to the seal, type of the activity (e.g., boat traffic, aircraft overflights, loud sounds, etc.), phase of seal life cycle (e.g., pupping season, non-pupping season), and the history of disturbance the colony has previously experienced. Depending on the activity, a wide range of seal ''reaction distances'' have been reported in the literature (e.g., 30–1,800 m (98–5900 ft)). In an adjacent SFB estuary, Bolinas Lagoon, 81 percent of disturbances (boats, hikers, dogs) were within 100 and 200 m (328 and 656 ft) of a harbor seal haul-out (Swift and Morgan 1993). Although seals at Castro Rocks have habituated to background traffic noise from the Bridge, they respond to unusual noises, such as hammering, truck horns, back-up signal beeps, work boats, and other human activity on the Bridge (Kopec, D., letter to CLP, dated October 3, 1997).

NMFS agrees that the exclusion zone should be expanded to further minimize the impact of seismic retrofit construction activities during the Closure Period. For this reason, NMFS is requiring Caltrans to greatly expand the northern boundary of the exclusion zone. For example, the northern boundary has been extended from the Bridge center line to 250 ft (76.2 m) north of the most northern tip of Castro Rocks (approximately 200 ft (61 m)) north of the Bridge center line). An expansion of this boundary further north is impractical due to the need for a safe navigation corridor north of the Bridge for work vessel access to construction staging areas near the east end of the Bridge. The southern boundary of the exclusion zone will be 250 ft (76.2 m) south of the southern tip of Castro Rocks. Due to the location of this boundary relative to the Bridge (600 ft/183 m), it is unlikely that the unrestricted area further south would be practicable for use during construction (e.g., corridor to a staging area on the south side of the Bridge). Any further expansion of the southern boundary would encroach onto waters outside Caltran's control (e.g., right-of-way) and could affect Chevron's oil pier operations further south. The eastern boundary will be 300 ft (91.4 m) east of the eastern tip of Castro Rocks, and the western boundary will be 300 ft (91.4 m) west of the western tip of Castro Rocks. Similarly, any further expansion of these boundaries would encroach onto waters outside Caltrans' control. Caltrans will minimize vessel traffic in the exclusion zone when conducting construction activities during the Work Period. For these reasons, NMFS believes these boundaries will have the least practicable impact on the California harbor seal population.

*Comment 13*: Caltrans recommends that the prohibition on pile installation and the limitation on maximum noise levels to 86 DBA re 20 uPa at 50 m between 7 p.m. and 7 a.m. be modified to the hours between 9 p.m. and 7 a.m.. Caltrans states that this is necessary to allow for the Bridge retrofit contractor to use two working shifts instead of one shift. Caltrans also recommends removing the 24-hr construction noise limitation near Castro Rocks during the pupping/molting restriction period because no work will be conducted between Piers 52 and 57, inclusive on the substructure, towers, or superstructure during this period.

*Response*: NMFS agrees. Although the night time restriction for pile installation and maximum noise levels was originally developed by Caltrans to minimize human residential noise disturbance, NMFS is also requiring night time restrictions because it believes that it could protect seals at Castro Rocks if they change their hauling-out patterns from daytime to night time. NMFS has modified the time period for this requirement from 7 p.m.-7 a.m. to 9 p.m.-7 a.m. because restricting this mitigation measure further would allow only one work shift, would likely result in another season of work near Castro Rocks, and thus, would result in prolonged disturbance to seals utilizing Castro Rocks (see Mitigation Measures). NMFS also agrees that the 24-hr. noise limitation near Castro Rocks is no longer necessary due to all work ceasing on the substructure, towers, and superstructure on Pier's 52–57, inclusive, during the pupping, breeding, and majority of the molting season.

*Comment 14*: CLP recommends that NMFS require Caltrans to conduct certain offsite mitigation that will enhance the protection of alternative haul-out sites, many of which are under pressure from human disturbance. Such mitigation might take the form of education signs or posters at haul-outs and other locations to reduce potential for human disturbance.

*Response*: NMFS believes that the mitigation measures imposed under the IHA will effectively mitigate the activity to the lowest level practicable and still allow the project to continue near to schedule. As a result, additional off-site mitigation measures are unwarranted. NMFS believes that mitigation banking is appropriate only under those circumstances when the impact cannot be mitigated onsite.

*Monitoring and Reporting Concerns*

*Comment 15*: CLP believes that the proposed monitoring plan is inadequate and should be replaced by a comprehensive, quantitative monitoring program. CLP recommends that the IHA establish upper limits of disturbance beyond which the source construction activity is curtailed. CLP believes the IHA should require continuous site monitoring and immediate reporting that, when triggered, will temporarily halt construction activity near Castro Rocks and will impose additional mitigation.

*Response*: NMFS has significantly expanded the requirements of the monitoring program that must be implemented by Caltrans under its IHA (see Monitoring). For example, the monitoring program includes pre-construction monitoring of Castro Rocks (e.g., baseline information) and frequent monitoring each week within the Work Period to document the effects of construction activities on harbor seals at Castro Rocks. The monitoring of at least one alternative haul-out site in SFB is also required to evaluate whether harbor seals at Castro Rocks could be hauling out at other sites in SFB as a result of construction. Monitoring will also occur during the Closure Period to evaluate whether construction activities are disturbing the seals during their pupping, breeding and molting periods. Moreover, night time censussing of harbor seals will occur during the Closure Period and Work Period at Castro Rocks to evaluate whether harbor seal haul-out behavior may be affected by construction activities during these periods. NMFS believes this improved monitoring program will be sufficient to collect appropriate data to adequately evaluate the biological impact of

construction activities on Castro Rocks harbor seals.

*Comment 16*: CLP suggested that enhanced protection and monitoring of other, limited, haul-out sites in SFB are critical to monitoring measures and must be implemented under National Environmental Policy Act (NEPA) and MMPA.

*Response*: In the IHA, NMFS is requiring Caltrans to simultaneously monitor at least one other harbor seal haul-out site in SFB to document potential changes in harbor seal population dynamics in SFB from seismic retrofit construction disturbance of seals at Castro Rocks.

*NEPA Concerns*

*Comment 17*: CLP states that NMFS must comply with NEPA, which is the statute requires the preparation of an environmental impact statement (EIS) where a Federal project may have a significant adverse impact on the environment.

*Response*: NMFS is issuing the IHA in compliance with NEPA. After assessing the effects of the Bridge project (undertaken with the mitigation measures) on marine mammals in an EA, NMFS found that issuance of the IHA will not have a significant effect on the human environment. Accordingly, an EIS was not prepared.

For the Bridge project as a whole, the lead Federal agency is the Federal Highway Administration (FHA). On August 15, 1997, the FHA determined that the retrofit project is categorically excluded from NEPA. In that determination, the FHA stated that the retrofit project does not have a significant effect on the human environment.

In addition, Caltrans determined that the retrofit project is statutorily exempt from the California Environmental Quality Act (CEQA) under section 180.2 of the Streets and Highways Code and section 2180(b)(4) of the Public Resources Code.

*Comment 18*: CLP states that CLP believes that an EIS must be prepared, unless the project is ''fully mitigated,'' to avoid ''devastating impacts'' (e.g., abandonment) on the future viability of Castro Rocks as a harbor seal haul-out site and adversely affecting the population stock that relies on Castro Rocks.

*Response*: NMFS does not agree that abandonment of Castro Rocks as a haul-out site is likely from the seismic retrofit construction of the Bridge, provided Caltrans undertakes the mitigation measures required in the IHA. NMFS expects that the short-term impact of construction to have a temporary modification in behavior by harbor seals at Castro Rocks and possibly by some California sea lions. At worst, disturbance from construction activities is expected to cause the harbor seals to haul-out at night at Castro Rocks (Kopec, D., letter to CLP, dated October 3, 1997), or to utilize alternative haul-out sites in the SFB for a short period (Harvey, J., 1997, pers. commun.). Therefore, NMFS expects the impacts from the seismic retrofit construction of the Bridge to have no more than a negligible impact on the California harbor seal population and does not expect harbor seals to permanently abandon Castro Rocks as a rookery or haul-out. With the mitigation measures NMFS is requiring, the Bridge project is expected to result in minimal disturbance to harbor seals at Castro Rocks.

**Mitigation Measures**

To limit incidental harassment to the lowest practicable level, NMFS will require Caltrans to implement the following mitigation measures. First, Caltrans must cease seismic retrofit construction work from February 15 to July 31 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Closure Period). Seismic retrofit work may occur from August 1 to February 14 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Work Period). Second, no water craft associated with construction activities will be deployed during the year within the ''exclusion zone'' except when construction equipment is required for seismic retrofit construction between Piers 52 and 57, inclusive, and within the Work Period. Vessel traffic will be minimized in the exclusion zone when construction activities are occurring during the Work Period. The boundary of the exclusion zone is rectangular in shape (1700 ft by 800 ft (518.2 m by 244 m)) and completely encloses Castro Rocks and Pier's 52-57, inclusive. The northern boundary of exclusion zone will be located 250 ft (76.2 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 250 ft (76.2 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91.4 m) from the most eastern tip of Castro Rocks, and the western boundary will be located 300 ft (91.4 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year. Lastly, between 9 p.m. and 7 a.m., no piles may be installed on the Bridge, and construction noise may not exceed 86 DBA re 20 uPa at 50 ft (15 m).

**Summary of Monitoring**

NMFS will require Caltrans to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. Caltrans will monitor at least one additional harbor seal haul-out within SFB to evaluate whether harbor seals use alternative hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 - February 14) and the Closure Period Phase (February 15 - July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between Pier's 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior once a day for a period of five consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior at the alternative San Francisco Bay harbor seal haul-out at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require under a second authorization that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week, the monitor will conduct an additional harbor seal census after midnight.

**Reporting**

Caltrans will provide weekly reports to the Southwest Regional Administer, NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults and sub-adults, number of females/males, number of redcoats, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure level measurements made at the haulout will also be provided.

A draft interim report must be submitted to the Southwest Regional Administrator on August 1, 1998. A draft final report must be submitted to the Southwest Regional Administrator within 90 days after the expiration of Caltrans Incidental Harassment Authorization. A final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report.

**NEPA**

NMFS has prepared an EA that concludes that the impacts of Caltrans' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of the EA is available upon request (see **ADDRESSES**).

**Conclusions**

NMFS has determined that the short-term impact of the seismic retrofit construction of the Bridge, as described above, will result, at worst, in the temporary modification in behavior by harbor seals and possibly by some California sea lions. While behavioral modifications, including temporarily vacating the haul-out, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of Pacific harbor seals and possibly of California sea lions; would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses; and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued. For the above reasons, NMFS has issued an IHA for a 1-year period beginning on the date noted above (see EFFECTIVE DATES) for the incidental harassment of harbor seals and California sea lions by the seismic retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, California, provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: December 16, 1997.

**Hilda Diaz-Soltero,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–33387 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121797A]**

### Atlantic Coastal Fisheries Cooperative Management Act; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Coordination meeting.

**SUMMARY:** NMFS and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act (Pub. L. 103–206) and the Atlantic Striped Bass Conservation Act (Pub. L. 102–103).

**DATES:** The meeting will convene on Thursday, January 15, 1998, at 10:00 a.m. and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

**ADDRESSES:** National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Anne Lange, Intergovernmental and Recreational Fisheries, NMFS 8484 Georgia Avenue, Silver Spring, MD 20910. Telephone: (301) 427–2014.

**SUPPLEMENTARY INFORMATION:** NMFS-USFWS hold semi-annual coordination meetings established under a Memorandum of Understanding to develop and implement a program to support interstate fishery management efforts associated with the Atlantic Coastal Fisheries Cooperative Management Act. The main agenda items for this meeting are discussion of the 1996–1997 Workplan; an update on implementation of the Atlantic Coast Cooperative Statistics Program; status of cooperative coastal/citizen tagging efforts; distribution of FY1998 Atlantic Coastal Act funds; a 1998 striped bass workshop; Striped Bass Act reauthorization; and ASMFC Fishery Management Plan work for 1998.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Lange (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: December 17, 1997.

**Richard Schaefer,**

*Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–33473 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121597B]**

### Permits; Foreign Fishing

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of foreign fishing applications.

**SUMMARY:** NMFS publishes for public review and comment summaries of applications submitted by the Government of Estonia and the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 1998 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**ADDRESSES:** Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2337.

**SUPPLEMENTARY INFORMATION:** In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*.).

This notice concerns the receipt of an application from the Government of Estonia and the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture (JV) operations in 1998 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The large stern trawler/processors JACOB HURT and SOELA are identified as the Estonian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations, and the large stern/trawler processors MAIRONIS and UTENA are identified as the Lithuanian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations.

While both applications also request authorization for the named vessels to directly harvest Atlantic mackerel and Atlantic herring, since no ''Total Allowable Level of Foreign Fishing'' (TALFF) is available for either of these species, no foreign vessels can be permitted to directly harvest Atlantic mackerel or Atlantic herring.

Dated: December 16, 1997.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–33386 Filed 12–22–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 120597A]**

### Marine Mammals; Scientific Research Permit No. 473–1433

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99835 has been issued a permit to take humpback whales (*Megaptera novaeangliae*), killer whales (*Orcinus orca*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), and fin whales (*B. physalus*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Regional Office, NMFS, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802 (907–586–7221).

**SUPPLEMENTARY INFORMATION:** On October 31, 1997, notice was published in the **Federal Register** (62 FR 58943) that the above-named applicant had submitted a request for a scientific research permit to inadvertently harass humpback whales (*Megaptera novaeangliae*), during the course of photo-identification research from December 1, 1997, to November 30, 2002 in Alaska waters, and to opportunistically photo-identify killer whales (*Orcinus orca*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), and fin whales (*B. physalus*) during the course of the humpback whale studies. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq*.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 12, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–33437 Filed 12–22–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121797C]**

### Marine Mammals; Scientific Research Permit No. 875–1401

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Dr. Christopher W. Clark, Cornell University, Ithaca, New York 14850, has requested an amendment to permit No. 875–1401.

**DATES:** Written comments must be received on or before January 22, 1998.

**ADDRESSES:** The application for amendment and related documents, including a draft environmental assessment (EA) that examines the environmental consequences of issuing the requested amended permit, are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application for amendment to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject amendment to permit No. 875–1401 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

Permit No. 875–1401 currently authorizes the harassment of several species of marine mammals during the conduct of research to study the effects of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of blue whales (*Balaenoptera musculus*) and fin whales (*Balaenoptera physalus*) feeding in the Southern California Bight during September/October of 1997 and/or 1998. An amendment to the Permit to conduct playback experiments on gray whales (*Eschrichtius robustus*) migrating along the central California coast during January 1998 is in final review.

Dr. Clark is now requesting that the Permit be amended to provide for the conduct of playback experiments using the SURTASS LFA sound source to study behavioral responses of breeding and nursing humpback whales (*Megaptera novaeangliae*) and foraging sperm whales (*Physeter macrocephalus*) in Hawaii during February-April of 1998. Individuals of several other cetacean, pinniped, and sea turtle species may be taken (*i.e.*, by harassment or auditory temporary threshold shift) during the proposed experiments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft EA examining the environmental consequences of issuing the requested amended permit has been prepared. Based upon this draft EA, NMFS has preliminarily concluded that issuance of the requested permit will not have a significant effect on the human environment.

Dated: December 18, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–33474 Filed 12-22-97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121797D]**

### Marine Mammals; Permit No. 965 (P66J)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Alaska Department of Fish and Game, P.O. Box 25526, Juneau, AK 99802–5526, has requested an amendment to permit no. 965.

**DATES:** Written or telefaxed comments must be received on or before January 22, 1998.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject amendment to permit no. 965, issued on June 19, 1995 (60 FR 34233) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit no. 965 authorizes the permit holder to: to take a maximum of 125 Steller sea lions (*Eumetopias jubatus*) by trapping, darting, sampling, and gas anesthesia (including a maximum of 20 by recapture for follow-up blood sampling and removal of instruments); a maximum of 400 Steller pups over 6 months old by hand capture, gas anesthesia, and marking; a maximum of 10,000 Stellers by harassment during the course of capturing suitable animals; a maximum of 15 Stellers by unintentional mortality during the course of capture and chemical immobilization and salvaged specimens of stranded animals, premature pups, and mortalities associated with this and other research activities. The holder is also authorized to take up to 30 rehabilitated California sea lions (*Zalophus californianus*) by injection with experimental immobilization drugs and a maximum of 3 for unintentional mortality. All takes will be over a 5-year period.

The permit holder requests amendment to the permit for: Underwater capture of 10 additional (25 total) juvenile Steller sea lions through use of a leash around their necks, with the opposite end of the leash attached to a buoy at the surface; and use of diazepam, xylazine, or medetomidine as a sedative with either flumazenil, tolazoline, or atipamezole as the reversal agent.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 18, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–33475 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, January 30, 1998.

**PLACE:** 1155 21st St., N.W., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33628 Filed 12–19–97; 2:36 pm]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, January 23, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33629 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, January 16, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33630 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, January 9, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33631 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, January 2, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33632 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, January 26, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33633 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, January 12, 1998.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33634 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, January 5, 1998.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33635 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Wednesday, January 21, 1998.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–33636 Filed 12–19–97; 2:36 pm]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Defense Finance and Accounting Service (DFAS).

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed reinstatement of customer service data collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by February 23, 1998.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Defense Finance and Accounting Service, Customer Service, ATTN: Mr. Darren Gomez, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

**FOR FURTHER INFORMATION CONTACT:** To request information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DFAS Customer Service at (703) 607–3930.

Title; Associated Form; and OMB Number: Customer Satisfaction Surveys-Generic Clearance, OMB Number 0730–0003.

*Needs and Uses:* The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS's existing services.

*Affected Public:* Individuals or Households, Business or other for profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

*Annual Burden Hours:* Estimated 2,958.

*Number of Respondents:* Estimated 20, 150.

*Responses per Respondent:* 1.

*Average Burden per Response:* 6 minutes.

*Frequency:* Annually.

**SUPPLEMENTARY INFORMATION:** Summary of Information Collection

DFAS will conduct a variety of activities to include, but not necessarily limited to customer satisfaction surveys, transaction based comment cards, transaction based telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. If the customer feedback activities were not conducted, DFAS would not only in violation of E.O. 12862, but would also not have the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for our process improvement activities. The information collected provides information about customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Dated: December 17, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–33365 Filed 12–22–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is amending systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed actions will be effective without further notice on January 22, 1998 unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems reports.

Dated: December 17, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0351aTRADOC**

**SYSTEM NAME:**

Army School Student Files *(February 2, 1996, 61 FR 3916).*

**CHANGES:**

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, U.S. Army Combined Arms Command, ATTN: ATZL-IMS-AR (Privacy Act Officer), Fort Leavenworth, KS 66027–2309.'

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**A0351aTRADOC**

**SYSTEM NAME:**

Army School Student Files.

**SYSTEM LOCATION:**

All Army schools, colleges, and training centers.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Students who attend formal and/or non-resident courses of instruction at Army schools, colleges and training centers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual academic records consisting of courses attended, length of each, extent of completion and results; aptitudes and personal qualities, including corporate fitness results; grade and rating attained; and related information; collateral individual training records comprising information posted to the basic individual academic training record or other long term records; faculty board files pertaining to the class standing/rating/classification/proficiency of students; class academic records maintained by training instructors indicating attendance and progress of class member instructors indicating attendance and progress of class members.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

**PURPOSE(S):**

To determine eligibility of students for attendance, monitor progress, record completion of academic requirements, and document courses which may be prerequisites for attendance/participation in other courses of instruction.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE:**

Paper records in file folders, cards, computer magnetic tapes/disks; printouts.

**RETRIEVABILITY:**

By individual's name, Social Security Number/military service number.

**SAFEGUARDS:**

Information is stored in locked cabinets or rooms, accessed only by authorized individuals having official need thereof.

User identification passwords are assigned each person with authorized access to the records. Each sign-on is authenticated by system software. Identification passwords are change every six months, additions and deletions occur at any time a new person is assigned or someone leaves. The above meets Army Information System Security Regulation requirements.

**RETENTION AND DISPOSAL:**

Individual and class academic records are destroyed after 40 years; collateral individual training records and faculty board files are destroyed after 1 year.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Combined Arms Command, ATTN: ATZL-IMS-AR (Privacy Act Officer), Fort Leavenworth, KS 66027–2309.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Academic Record Office of the Army school, college, or training center attended.

Individual should provide full name, student number, course title and class number, or description of type training received and dates of attendance/enrollment.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Academic Record Office of the Army School, college, or training center attended.

Individual should provide full name, student number, course title and class number, or description of type training received and dates of attendance/enrollment.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents; and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the staff and faculty of appropriate school, college, or training center responsible for the instruction.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0351bTRADOC**

**SYSTEM NAME:**

Army Correspondence Course Program (ACCP) *(February 2, 1996, 61 FR 3917).*

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with 'Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.'

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23604–5000.'

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**A0351bTRADOC**

**SYSTEM NAME:**

Army Correspondence Course Program (ACCP).

**SYSTEM LOCATION:**

Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Army, Navy, Marine Corps, and Air Force, Reserve Officer Training Corps and National Defense Cadet Corps students, Department of Defense civilian employees, and approved foreign military personnel enrolled in a non-resident course administered by the Army Institute for Professional Development.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Files contain name, grade/rank, Social Security Number, address, service component, branch, personnel classification, military occupational specialty, credit hours accumulated, examination and lesson grades, student academic status, curricula, course description.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013 and E.O. 9397 (SSN).

**PURPOSE(S):**

To record lessons and/or exam grades; maintain student academic status; course and subcourse descriptions; produce course completion certificates and reflect credit hours earned; and produce management summary reports.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tapes, discs, paper printouts, and microfiche.

**RETRIEVABILITY:**

By Social Security Number.

**SAFEGUARDS:**

Random number sign-on authentication for each inquiry made to the system is required. Sign-on decks to enable such access are updated weekly, safeguarded under Army Regulation 380–19, Information Systems Security, and are unique to one terminal only. Access is granted only to designated personnel at the Army Institute for Professional Development responsible for the administration and processing of non-resident students.

**RETENTION AND DISPOSAL:**

Machine records are retained during student's enrollment, after which student's records are transferred to the

Academic Records System History File for indefinite retention. Non-resident students are assigned a 12 month enrollment period. A hard copy transcript reflecting the student's personal and academic data is produced; this is retained by the Army Institute of Professional Development for 3 years, then transferred to the National Personnel Records Center, St. Louis, MO, where it is retained for 37 years, then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23604–5000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting content, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From individual upon enrollment, from class records and instructors, and from graded examinations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600DARP**

**SYSTEM NAME:**

Career Management Files of Dual Component Personnel *(February 22, 1993, 58 FR 10132).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0600ARPC'.

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

* * * * *

**A0600ARPC**

**SYSTEM NAME:**

Career Management Files of Dual Component Personnel.

**SYSTEM LOCATION:**

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any reserve or warrant officer on active duty as a Regular Army enlisted man; any reserve officer on active duty as a Regular Army warrant officer.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, rank, Social Security Number, basic pay entry date, promotion eligibility date, mandatory removal date, military education, copies of officer evaluation reports, academic reports, qualification records, letters of appreciation and commendation, general orders, concerning awards; and similar documents, records and reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

**PURPOSE(S):**

To advise reserve officers when they will be considered for promotion, military education that needs to be completed for eligibility; to determine if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer or enlisted person; to apprise individuals of changes in the reserve program affecting them.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic tape/disc.

**RETRIEVABILITY:**

By individual's surname and Social Security Number.

**SAFEGUARDS:**

All records are restricted to officially designated individuals having need therefor in assigned duties. Records are maintained in secured buildings; automated data are stored in vaults.

**RETENTION AND DISPOSAL:**

Records in this system are combined with Army personnel records. Dual Component officer and enlisted Official Military Personnel Files are retained at the U.S. Army Enlisted Records and Evaluation Center, if serving as an enlisted person and the U.S. Total Army Personnel Command, if a warrant officer. Officer Military Personnel Records Jackets are to be maintained at the dual component individual's current unit of assignment. Dual Component's Career Management Individual Files are maintained at the U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army

Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rule for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600USAREUR**

**SYSTEM NAME:**

USAREUR Community Automation System (UCAS) *(February 22, 1993, 58 FR 10133).*

**CHANGES:**

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.'

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**A0600USAREUR**

**SYSTEM NAME:**

USAREUR Community Automation System (UCAS).

**SYSTEM LOCATION:**

Each United States Army Europe community. United States Army Europe and Seventh Army, APO AE 09014–0100.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

U.S. Army Europe (USAREUR) and Seventh Army military and civilian members and their dependents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, command and unit of assignment, military occupational skill, sex, date of birth, date eligible to return from overseas, basic active service date, pay entry basic date, expiration term of service, date of rank, rank/grade, promotion status, citizenship, marital status, spouse's Social Security Number (for military spouse), insurance and beneficiary data for Department of Defense Form 93 (Record of Emergency Data) and Department of Veterans Affairs Form 29–8286 (Serviceman's Group Life Insurance Election) completion in an automated format (DD Form 93–E and SGLV Form 8286–E), address, work and home telephone numbers, type of tour, dependent status and relationships, marriage data, type and date of cost of living allowance, port call date, departure date and order number, exceptional family member status, household goods/hold baggage, vehicle-shipment dates/destinations/weights.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); and Army Regulation 600-8, Military Personnel Operations.

**PURPOSE(S):**

The primary purpose of UCAS is to provide a central database containing all information required to in-process or out-process individuals within a USAREUR community. This data base is shared among five community work centers that need information on arriving and departing personnel. These work centers, the Central Processing Facility, Personnel Services Company, Finance Office, Housing Office and the Transportation Office, have access to certain portions of the UCAS data base. Data base information updates made by each work center are shared by all work centers that need the information. The centralized data base reduces in-processing and out-processing time since individuals no longer need to furnish the same information at each work centers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Computer magnetic tapes and discs; computer printouts.

**RETRIEVABILITY:**

By Social Security Number, name, or other individual or group identifier.

**SAFEGUARDS:**

Physical security devices, computer hardware and software security features, and personnel clearances for individuals working with the system. Automated media and equipment are protected by controlled access to computer rooms.

**RETENTION AND DISPOSAL:**

Information is destroyed 30 days after individual's tour of duty with that community ends.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

Individuals should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records themselves contained in this record about system should address written inquiries to the Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

Individual should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records, reports and other official documents; Army Standard Automated Management Information Systems.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600–8DARP**

**SYSTEM NAME:**

Individual Ready, Standby, and Retired Reserve Personnel Information

System *(February 22, 1993, 58 FR 10134).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8ARPC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

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**A0600–8ARPC**

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve and assigned to a Reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and military status and qualifications data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are located in secured building; access requires an ID badge and is limited to individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are maintained for 7 months after individual completes statutory or contractual reserve commitment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

**A0600–8NGB**

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG) *(February 22, 1993, 58 FR 10135).*

CHANGES:

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RETENTION AND DISPOSAL:

Delete entry and replace with 'Data on all members of the Army National Guard is archived to magnetic media monthly and destroyed after two (2) years.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.'

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**A0600–8NGB**

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG).

SYSTEM LOCATION:

The system operates at two levels. Each state ARNG headquarters has primary responsibility for editing and updating the database; the National Guard Bureau (NGB) centrally collects and controls data flows to/from the states thereby creating the database for reports preparation to Headquarters, Department of the Army, Department of Defense, and other agencies. Addresses for each state headquarters may be obtained from the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Soldier's name, Social Security Number, grade/rank, sex, race, ethnic group, current military assignment, military qualifications, dates relevant to military service, civilian occupation, and other similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

**PURPOSE(S):**

The principal purposes are to report accessions and losses to ARNG strength; to provide information for personnel management; and to support automated interfaces with authorized information systems for pay, mobilization, etc.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tapes/discs.

**RETRIEVABILITY:**

By name and Social Security Number.

**SAFEGUARDS:**

Access to data storage area and distribution of printouts is controlled. Approval of functional manager must be obtained before data may be retrieved or distributed.

**RETENTION AND DISPOSAL:**

Data on all members of the Army National Guard isarchived to magnetic media monthly and destroyed after two (2) years.

**SYSTEM MANAGER(S) AND ADDRESS:**

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, present address and telephone number, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, present address and telephone number, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, individual's personnel and pay files, other Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600–8–1cTAPC**

**SYSTEM NAME:**

Casualty Information System (CIS) *(February 22, 1993, 58 FR 10139).*

**CHANGES:**

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**SYSTEM NAME:**

Delete entry and replace with 'Army Casualty Information Processing System (ACIPS)'.

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**A0600–8–1cTAPC**

**SYSTEM NAME:**

Army Casualty Information Processing System (ACIPS).

**SYSTEM LOCATION:**

U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Army personnel who are reported as casualties in accordance with Army Regulation 600–8–1, Army Casualty Operations, Assistance, Insurance and Line of Duty Administrative Procedures.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, date of birth, branch of service, organization, duty, military occupational specialty (MOS), rank, sex, race, religion, home of record, and other pertinent information; Military Personnel Records Jacket (MPRJ), health/dental records, all correspondence between Department of the Army and soldier, soldier's primary next of kin/secondary next of kin, inquiries from other agencies and individuals, DD Form 1300 (Report of Casualty).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013; Pub. L. 93–289; and E.O. 9397 (SSN).

**PURPOSE(S):**

To respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to Army members.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tapes, computer printouts, punch cards, paper records in file cabinets.

**RETRIEVABILITY:**

By individual's name and/or Social Security Number or any other data element.

**SAFEGUARDS:**

All information is restricted to a secure area in buildings which employ security guards.

Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

**RETENTION AND DISPOSAL:**

Records are permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From casualty reports received from Army commanders and from investigations conducted by Army commanders under AR 15–6, Procedures for Investigating Officers and Boards of Officers.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0601–141 DASG**

**SYSTEM NAME:**

Army Medical Procurement Applicant Files *(February 22, 1993, 58 FR 10144).*

**CHANGES:**

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.'

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**A0601–141 DASG**

**SYSTEM NAME:**

Army Medical Procurement Applicant Files.

**SYSTEM LOCATION:**

Primary location: Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

Secondary location: Army Medical Department Procurement Counselor field offices. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Potential applicants for the Army Medical Department procurement programs, to include applicants for appointment in the Regular Army and U.S. Army Reserve.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Interview sheets, counselor evaluations, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment (DA Form 61), professional degrees, license certifications, quality assurance documents, prior service records, physical, and birth certificate.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013 and 4301.

**PURPOSE(S):**

To evaluate an applicant's acceptability and potential for appointment in a component of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority; to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Personnel Procurement Program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By applicant's surname.

**SAFEGUARDS:**

Records are restricted to designated officials having need therefor in the performance of official duties.

**RETENTION AND DISPOSAL:**

Records of selected applicants are held for 10 years before being destroyed by shredding; those for applicants not selected are held 2 years and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full names, Social Security Number, sufficient details to permit locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full name, Social Security Number, sufficient details to permit locating pertinent records, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; academic transcripts; faculty evaluations; employer evaluations; military supervisor evaluations; American Testing Program; Educational Testing Service; selection board/committee records; prior military service records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5),

but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

**A0608a CFSC**

**SYSTEM NAME:**

Family Life Communications Information and Referral Service *(February 22, 1993, 58 FR 10154).*

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with 'U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. Segments of the system are located at Family Assistance/Quality of Life Offices at major commands and installations, Army-wide.'

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**A0608a CFSC**

**SYSTEM NAME:**

Family Life Communications Information and Referral Service.

**SYSTEM LOCATION:**

U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. Segments of the system are located at Family Assistance/Quality of Life Offices at major commands and installations, Army-wide.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Army service members, civilian employees, their families, social service organizations (Federal, State, local) acting on behalf of the member, employee, or family member. Other military service personnel and civilian employees may be included when such individuals are stationed with Army elements.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, mailing address and telephone number of the individual; documentation reflecting nature or basis of service desired or required in the following typical matters, but only to the extent or degree required to determine the proper office, command, or installation that should handle details, resolve problems, or provide responses: Pay, medical, education, housing, voting, commissary/exchange privileges and practices, community service programs provided by chaplains, alcohol/drug abuse, Equal Employment Opportunity; related processing papers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations.

**PURPOSE(S):**

To provide assistance to service members (active duty, reserve/ retired), civilian employees and their families in programs that affect family life. Statistical data may be provided commanders or managers at all levels of the Army in support of their functions or programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

Information may be disclosed to bonafide Federal, State, or local social service or welfare organizations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic tape, disc, cassette.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Records are maintained in buildings guarded by security personnel and rooms are secured by locked doors when not in use. All records are restricted to individuals having official need therefor in the performance of their assigned duties. Information in automated media is further protected by an authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

**RETENTION AND DISPOSAL:**

Information is retained for 2 years following resolution of the problem or provision of information, after which it is destroyed by shredding or erasing. Information in automated media used to provide statistical data is retained indefinitely; however, individually identifiable data are purged within 2 years following resolution of problem.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system of records contains information about them should contact either the Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301, or the Major Army Command or installation to which initial inquiry was directed.

Individual should provide his/her full name, Social Security Number, current address and telephone number, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves should write the Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 or the Major Army Command or installation to which initial inquiry was directed.

Individual should provide his/her full name, Social Security Number, current address and telephone number, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; his/her family; social or welfare organizations under Federal, State, or local jurisdiction; official military or civilian records; other components of the Department of Defense.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0640 DARP**

**SYSTEM NAME:**

Personnel Management/Action Officer Files *(February 22, 1993, 58 FR 10162).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0640 ARPC'.

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**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F,

9700 Page Boulevard, St. Louis, MO 63132–5200.

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**A0640 ARPC**

**SYSTEM NAME:**

Personnel Management/Action Officer Files.

**SYSTEM LOCATION:**

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, unit personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence; orders; pay vouchers; efficiency reports; assignment instructions; medical evaluations; request for waiver of disqualifications; grade determinations; flagging actions which preclude completion of favorable personnel actions; transcripts; requests for transfer to another Branch, status, or service; claims for pay; assignment instructions for Active Duty or Active Duty for Training; applications for delay or exemption from Active Duty/Active Duty for Training; nominations for decorations or awards; notification of removal from active Reserve status for physical disqualification, non-participation, being passed over twice for promotion, or elimination action; application for waiver of disqualifications for enlistment in U.S. Army Reserves; request for discharge or voiding of enlistments; requests for transfer to or from the Ready Reserve, Standby Reserve, or Retired Reserve; claims for pay not received while on active duty; request for assignment/attachment to Army National Guard units, mobilization designation positions or detachments, reinforcement training units, and U.S. Army Reserve school student detachments; applications for participation in Army Reserve Logistics Career Program and Foreign Area Officer Program; decisions pertaining to the career management of officers and senior enlisted personnel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

**PURPOSE(S):**

To respond to inquiries from an individual or other government agencies concerning reserve status of Army personnel.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file cabinets; card files.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Records are accessed only by designated individuals having official need therefore in the performance of assigned duties.

**RETENTION AND DISPOSAL:**

Records are maintained for a period of 6 months to 3 years depending on the type of action involved, after which they are destroyed by shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, and current and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, and current address and telephone number.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0640–10 DARP**

**SYSTEM NAME:**

Philippine Army Files *(February 22, 1993, 58 FR 10163).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0640–10 ARPC'.

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

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**A0640–10 ARPC**

**SYSTEM NAME:**

Philippine Army Files.

**SYSTEM LOCATION:**

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Philippine Commonwealth Army who were inducted for service with the U.S. Armed Forces Far East under the Military Order of the President of the United States dated July 26, 1941; Philippines who served in Guerrilla units officially recognized and listed in the Recognized Philippine Guerrilla Rosters.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

World War II claim folders which contain enlistment papers, orders inducting individual into U.S. Armed Forces Far East service, soldier's qualification card, unit orders of assignment, efficiency rating sheets, pay vouchers or receipts, affidavits and certificates, service records, determination of status under the Missing Persons Act.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013; 37 U.S.C. 556; and 38 U.S.C. 107.

**PURPOSE(S):**

To answer inquiries regarding individuals who served, or allegedly served, with the Philippine Commonwealth Army including recognized Guerrilla Forces, during World War II, in the Philippines.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

To the Department of Veterans Affairs to verify or certify service with the U.S. Armed Forces Far East or recognized guerrilla units; provide available medical records or other documents to assist in determining benefits.

To the Department of Justice to certify or verify service regarding application of individual for citizenship.

To the Department of Health and Human Services to verify type of service that is used to assist in determining eligibility for benefits.

To the Department of State to provide statement of service or verification of type of service performed.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By name, service number, VA claim number, units assigned to during period of service in question, names of parents, birth date and place, name of spouse and children if applicable. (Due to similarity of names complete file must be screened to determine proper individual.)

**SAFEGUARDS:**

Records are maintained in area accessible only to designated personnel having official need therefor.

**RETENTION AND DISPOSAL:**

Records are permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From records of military service compiled during period of individual's service with the Philippine Commonwealth Army and/or the U.S. Armed Forces Far East prior to December 7, 1941 up to August 1945.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0640–10b NGB**

**SYSTEM NAME:**

Military Personnel Records Jacket (NGB) *(February 22, 1993, 58 FR 10164).*

**CHANGES:**

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-C, 111 George Mason Drive, Arlington, VA 22204–1382.'

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**A0640–10b NGB**

**SYSTEM NAME:**

Military Personnel Records Jacket (NGB).

**SYSTEM LOCATION:**

The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non-PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All members of the Army National Guard not on active duty.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of records are outlined in AR 640–10. Examples of the type of document included in the Military Personnel Records Jacket (DA Form 201) are the individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's Group Life Insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DD Form 2091), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

**PURPOSE(S):**

These records are created and maintained to: Manage the member's National Guard Service effectively; Historically document the member's military service; and Safeguard the rights of members and the Army.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

To the Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Education; Department of Labor; Department of State; Department of the Treasury; Department of Transportation; Federal Aviation Agency; National Transportation Safety Board; American

Battle Monuments Commission; Department of Veterans Affairs; Federal Communications Commission; U.S. Postal Service; Office of Personnel Management; Selective Service System; Social Security Administration; state, county and city welfare organizations when information is required to consider applications for benefits; penal institutions when the individual is a patient or an inmate; state, county and city law enforcement authorities.

*NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, as amended, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By individual's name.

**SAFEGUARDS:**

Records maintained in areas accessible only to authorized personnel having need therefor in the performance of official business. The Military Personnel Records Jacket is transferred from station to station in the personal possession of the individual whose record it is, or by U.S. Postal Service.

**RETENTION AND DISPOSAL:**

Military personnel records are retained until updated or service of individual is terminated. Following separation, the disposition of the records is to the U.S. Army Reserve Personnel Center or to the National Personnel Records Center in accordance with 640–10.

**SYSTEM MANAGER(S) AND ADDRESS:**

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-C, 111 George Mason Drive, Arlington, VA 22204–1382.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0640–10c NGB**

**SYSTEM NAME:**

Official Military Personnel File (Army National Guard) *(February 22, 1993, 58 FR 10165).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0600–8–104c NGB'.

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**SYSTEM LOCATION:**

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.'

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**STORAGE:**

Delete entry and replace with 'Microfiche are stored on (PERMS/ODI) Personnel Electronic Record Management System/Optical Digital Imagery. Temporary files purged and scanned on ODI, selected data automated for management purposes on disks, and (COM) Computer Output Microfiche.'

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**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.'

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**A0640–8–104c NGB**

**SYSTEM NAME:**

Official Military Personnel File (Army National Guard) *(February 22, 1993, 58 FR 10165).*

**SYSTEM LOCATION:**

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Each commissioned or warrant officer in the Army National Guard not on active duty.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include enlistment contract, physical evaluation board proceedings; statement of service; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance; application for retired pay;

application for correction of military records; application for active duty; transfer or discharge; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; award recommendations; academic reports; casualty reports; field medical card; retirement points; deferment; pre-induction processing and commissioning data; transcripts of military records; survivor benefit plans; efficiency reports; records of proceedings, 10 U.S.C. 815 and appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; retired benefits; application for review by physical evaluation board; birth certificate; citizenship statements and status; educational transcripts; flight status board reviews; efficiency appeals; promotion/reduction/recommendations approvals/declinations announcements/notifications and reconsiderations; notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and orders relating to military service including information pertaining to dependents, inter or intraservice details, determinations, reliefs; pay entitlements, releases, transfers; and other relevant documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

**PURPOSE(S):**

These records are created and maintained to manage the member's Army National Guard service effectively; document the member's military service history; and, safeguard the rights of the member and the Army.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Justice to file fingerprint cards; to perform intelligence function.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical and health functions authorized by 10 U.S.C. 1074–1079.

To the Atomic Energy Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

To the Federal Aviation Agency to obtain flight certification and licenses.

To the General Services Administration for records storage, archival services, and for printing of directories and related material requiring personal data.

To the U.S. Postal Service to accomplish postal service authorization.

To the Department of Veterans Affairs to provide information relating to benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with statutes relating to in-service alien registration, and annual residence information.

To the Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, made, and harbor master for duty as Transportation Corps warrant officer.

To each state and U.S. possession to support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard Affairs.

To civilian educational, and training institutions to accomplish student registration, tuition support, Graduate Record Examination tests requirement, and related school requirements incident to in-service education programs in compliance with 10 U.S.C., Chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Numbers; to transmit Federal Insurance Compensation Act deductions made from in-service members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard and Army National Guard when service members perform duty with the U.S. Coast Guard elements or training activities.

To Civil Authorities for Compliance with 10 U.S.C. 814.

*NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.*

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Microfiche are stored on (PERMS/ODI) Personnel Electronic Record Management System/Optical Digital Imagery. Temporary files purged and scanned on ODI, selected data automated for management purposes on disks, and (COM) Computer Output Microfiche.

**RETRIEVABILITY:**

By Social Security Number.

**SAFEGUARDS:**

Records are maintained in secured areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

**RETENTION AND DISPOSAL:**

Microfiche and paper records are permanent: retained in active file until termination of service following which they are retired to the custody of the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

**SYSTEM MANAGER(S) AND ADDRESS:**

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, current or former military status, current home address, and signature.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, current or former military status, current home address, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the Service member's status.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 97–33364 Filed 12–22–97; 8:45 am]

**BILLING CODE 5000–04–F**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 22, 1998.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 17, 1997.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* New.

*Title:* Case Studies of the Implementation of the Crossroads Cafe Project.

*Frequency:* Weekly.

*Affected Public:* Individuals or households; Businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Burden:*

Responses: 316.

Burden Hours: 1,458.

*Abstract:* This study is designed to provide the U.S. Department of Education with information on the implementation of the Crossroads Cafe Project, a distance education model for delivering English-as-a-Second Language (ESL) services to adult ESL learners. The study will also provide a pilot test of a design for an impact evaluation of the Crossroads Cafe Project. Data will be gathered from approximately 200 adult ESL learners and teachers at 3 state sites, as well as state implementation team members and technical assistance providers.

[FR Doc. 97–33395 Filed 12–22–97; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation Policy; Proposed Subseqent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent arrangement.

**SUMMARY:** Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning the Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/AR(CA)–1 for the transfer of 2 kilograms of zirconium alloy metal doped with 9.6 grams of unirradiated enriched uranium containing 8.9 grams of the isotope U–

235 (93.04 percent enrichment) from Canada to Argentina for use in experiments of irradiation growth of zirconium alloy at low temperatures.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 17, 1997.

For the Department of Energy.

**Cherie P. Fitzgerald,**

*Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.*

[FR Doc. 97–33441 Filed 12–22–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent Arrangement.

**SUMMARY:** Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/IE(EU)–12 for the transfer of 35,000 grams of uranium in the form of metal and oxide containing less than 7,000 grams of the isotope U–235 (19.75 percent enrichment) from UKAEA, Dounreay, United Kingdom to Indonesia for manufacturing fuel elements to be used at the MPR–30 and/or RPI–10 Research Reactor(s) in Sepong, Indonesia.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 17, 1997.

For the Department of Energy.

**Cherie P. Fitzgerald,**

*Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.*

[FR Doc. 97–33442 Filed 12–22–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Docket No. EA–166]**

### Application To Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Duke Energy Trading and Marketing, L.L.C. (Duke Energy) has applied for authorization to transmit electric energy from the United States to Mexico.

**DATES:** Comments, protests or requests to intervene must be submitted on or before January 22, 1998.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 11, 1997, Duke Energy applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, Duke Energy has proposed to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

The exported energy would be delivered to Mexico over transmission facilities owned by San Diego Gas & Electric Company, The El Paso Electric Company, Central Power and Light Company, and Comission Federal de Electricidad, the national electric utility of Mexico. Each of the transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive order 10485, as amended.

**Procedural Matters**

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on Duke Energy's request to export electric energy to Mexico should be clearly marked with Docket EA–166. Additional copies are to be filed with Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, L.L.C., One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042; Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180, *AND* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. Further information may also be obtained on the program through the World Wide Web by accessing the Fossil Energy Home Page at http://www.fe.doe.gov then selecting ''Regulatory'' from the options menu.

In Washington, DC on December 12, 1997.

**Anthony J. Como,**

*Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 97–33444 Filed 12–22–97; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Docket No. EA–102–B]**

### Application To Export Electric Energy; Enron Power Marketing, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Enron Power Marketing, Inc. (Enron) has applied for renewal of its authority to transmit electric energy from the United States to Mexico.

**DATES:** Comments, protests or requests to intervene must be submitted on or before January 22, 1998.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 6, 1996, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Enron, a power marketer, to transmit electric energy from the United States to Mexico. The term of the authorization was for a period of two years. On December 5, 1997, Enron filed an application with FE for renewal of this authority which expires on February 6, 1998.

The exported energy would be delivered to Mexico over transmission facilities owned by San Diego Gas & Electric Company, The El Paso Electric Company, Central Power and Light Company, and Comission Federal de Electricidad, the national electric utility of Mexico. Each of the transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive order 10485, as amended.

**Procedural Matters**

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on Enron's request to renew its export authorization to Mexico should be clearly marked with Docket EA–102–B. Additional copies are to be filed directly with Christi L. Nicolay, Enron Power Marketing, Inc., Post Office Box 1188, EB641–C, Houston, TX 77251 and David B. Ward, Ward & Anderson, 1000 Thomas Jefferson Street, NW, Suite 503, Washington, DC 20007. Jesse A. Dillon, Senior Counsel, PP&L, Inc., Two North Ninth Street, Allentown, PA 18101 and Douglas H. Rosenberg, Preston Gates & Ellis, LLP, 5000 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104–7078.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. Further information may also be obtained on the program through the World Wide Web by accessing the Fossil Energy Home Page at http://www.fe.doe.gov then selecting ''Regulatory'' from the options menu.

In Washington, DC on December 12, 1997.

**Anthony J. Como,**

*Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 97–33443 Filed 12–22–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–421–000]**

## Cinergy Services, Inc., Notice of Filing

December 17, 1997.

Take notice that on December 15, 1997, Cinergy Services, Inc., on behalf of CinCap IV, LLC, filed an amendment to its October 31, 1997 and December 9, 1997, filings in the above-captioned docket. This amendment would allow CinCap IV, to enter into transactions with affiliated power marketers and EWGs. Cinergy Services, Inc., has requested a January 15, 1998, effective date for the amendment to Rate Schedule FERC No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–33391 Filed 12–22–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER92–533–003]**

## Louisville Gas and Electric Company; Notice of Filing

December 17, 1997.

Take notice that on September 17, 1997, Louisville Gas and Electric Company (LG&E) filed a notification of a change in status describing a proposed transaction between certain affiliates of LG&E and Big Rivers Electric Corporation (Transaction). LG&E's only role in the Transaction is to cede a portion of its retail service territory to an affiliate, LG&E Station Two Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–33390 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–279–003]**

## Warren Transportation, Inc.; Notice of Tariff Filing

December 17, 1997.

Take notice that on December 10, 1997, Warren Transportation, Inc. (WTI), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed for inclusion as part of its FERC Gas Tariff, Original Volume No. 1, to be effective on December 15, 1997:

First Revised Sheet No. 1.

WTI states that it is filing this sheet to reflect a change in the designated contact person for communications regarding its FERC Tariff. WTI states that because this sheet has no substantive effect to its tariff, it is requesting waiver of the 30-day notice requirement of Section 154.207. WTI also states that it is submitting at Appendix A to its filing, its intended usage of the Version 1.1 GISB data elements for the implementation of the electronic GISB standards on December 15, 1997, as required by a November 6, 1997 Letter Order in Docket Nos. CP97–279–000, *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–33389 Filed 12–22–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2612–005 Maine]**

## Central Maine Power Company; Notice of Availability of Draft Environmental Assessment

December 17, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Flagstaff Project, located in Somerset and Franklin Counties, Maine, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 2–A, Washington, D.C. 20426. Please affix ''Flagstaff Project No. 2512'' to all comments. For further information, please contact Edward R. Meyer at (202) 208–7998.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–33392 Filed 12–22–97; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5939–2]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 40 CFR part 63, subpart JJ, Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, OMB number 2060–0324, Expiration Date February 28, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1716.02.

**SUPPLEMENTARY INFORMATION:**

*Title:* 40 CFR part 63, subpart JJ, Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, OMB number 2060–0324, EPA ICR number 1716.02, Expiring February 28, 1998. The Agency is requesting an extension of a currently approved collection.

*Abstract:* Respondents to this information collection request are the owners and operators of both new and existing wood furniture manufacturing operations that are major sources of hazardous air pollutants. Respondents are required to submit both initial and regular semiannual compliance reports and to perform recordkeeping activities. The information is used to determine that all sources subject to the rule are complying with the standards. The information to be collected is mandatory under the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 19, 1997 ( FR 44122 ); two comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.67 hours per response. Burden means the total time, effort, or financial resources expended

by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Respondents/Affected Entities: Wood Furniture Manufacturers.

*Estimated Number of Respondents:* 750.

*Frequency of Response:* On occasion, quarterly, semi-annually and annual reports are required.

*Estimated Total Annual Hour Burden:* 91,430 hours.

*Estimated Total Annualized Cost Burden:* $34,830.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1716.02 and OMB Control No. 2060–0324 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 17, 1997.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 97–33454 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5939–3]**

### Environmental Laboratory Advisory Board; Nominees, Meeting Date and Agenda

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on January 16, 1998, from 1 pm to 5 pm. This meeting immediately follows the National Environmental Laboratory Accreditation Conference (NELAC) Third Interim Meeting and will be held in the Sheraton National Hotel at 900 South Orme Street in Arlington, VA. Directions can be obtained from the hotel by calling 703/521–2122.

The agenda will include discussions on (1) the fact findings of the Good Laboratory Practices subcommittee, which will present its final report; (2) consideration of a request to establish a separate fact finding subcommittee on third party assessors; and (3) a report from NELAC on issues regarding implementation. Comments on the NELAC standards, as discussed during the Third Interim Meeting, will be solicited. Standards are scheduled to be posted on the electronic bulletin board on December 13, 1997. The Internet site address for the standards is: http://ttnwww.rtpnc.epa.gov/html/nelac/nelac.htm.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are most valuable and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NERL (MD–75A); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4261, or E-mail mourrain.jeanne@epamail.epa.gov.

Dated: December 10, 1997.

**Nancy W. Wentworth,**

*Director, Quality Assurance Division.*

[FR Doc. 97–33453 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–64036; FRL 5764–2]**

### Notice of Termination of the Use of Methamidophos on All Crops Except Cotton and Potatoes, and Cancellation of All Methamidophos 24(c) Food-Use Registration Not Labeled for Use on Tomatoes Only

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of its response to requests for amendment by Bayer Corporation and Valent USA, the sole U.S. registrants of the insecticide methamidophos, to terminate the use of methamidophos on all agricultural crops except cotton and potatoes by deleting all other uses from all methamidophos FIFRA section 3 registrations, and to cancel all section 24(c) food-use registrations not labeled for use on tomatoes only.

**DATES:** These terminations and cancellations are effective on December 31, 1997, subject to the existing stocks provision specified herein.

**FOR FURTHER INFORMATION CONTACT:** By mail: Philip Poli, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8038; e-mail: poli.philip@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30–day public comment period. Thereafter, the Administrator of EPA may approve such a request, unless the Administrator determines, in the case of a pesticide that is registered for a minor agricultural use, that the cancellation or termination of uses would adversely affect the availability of the pesticide for use. If such a determination is made, unless certain exceptions apply, the Administrator may not approve or reject a request until 180 days have passed from the date of publication in the **Federal Register** of the notice of receipt.

Methamidophos is registered for minor agricultural uses that would be affected by a termination of uses and cancellation of registrations. Accordingly, in a July 2, 1997 **Federal Register** notice announcing receipt of these requests for termination/cancellation, the Administrator set forth a 180–day effective schedule for approval of the requests.

#### II. Background

EPA conducted an occupational risk assessment that estimated risks associated with short-and intermediate-term exposures of agricultural workers to methamidophos. The assessment indicated that the risks to workers of

acute exposure exceeded EPA's level of concern. In addition to the risk assessment, EPA had California and nationwide human incident data indicating acute worker exposure incidents associated with methamidophos use. EPA met with Bayer and Valent, the sole U.S. methamidophos registrants, on August 1, 1996, to present EPA's concerns and discuss voluntary measures to reduce risk. At the meeting, the registrants proposed the use terminations and product cancellations announced in this notice, as well as other measures including additional spray drift language, a phase-in of closed mixing and loading systems, and participation in industry-wide education efforts.

In the **Federal Register** of July 2, 1997 (62 FR 35812) (FRL 5724-7), EPA issued a notice announcing receipt of the methamidophos registrants' requests to terminate uses and cancel registrations under sections 3 and 24(c) of FIFRA, and provided notice of EPA's intent to accept those requests. In letters dated November 12, 1996, and February 21, 1997 respectively, Bayer and Valent requested that FIFRA section 3 registrations be amended to terminate (by use deletion) the use of methamidophos on broccoli, Brussels sprouts, cabbage, cauliflower, celery, and sugar beets, and that section 24(c) registrations labeled for melons, cucumbers, lettuce, alfalfa, bermuda grass, peppers, clover, and eggplant be canceled, leaving tomatoes as the only remaining food use with methamidophos 24(c) registrations.

The following comments were received by the Agency in response to the notice published in the **Federal Register** of July 2, 1997:

1. *Comment from Bayer Corporation*. A comment was received by the Agency from Bayer Corporation concerning the existing stocks provision as stated in the notice of July 2, 1997. Bayer Corporation requested that the Agency amend the existing stocks provision to allow the existing stocks already in possession of the dealers as of December 31, 1997, to be distributed, sold, or used legally until they are exhausted.

*Agency response*. The Agency after reviewing the existing stocks provision as listed in the notice published in the **Federal Register** of July 2, 1997, concurs with the company request. The Agency believes that the amount of methamidophos in inventory is relatively small and will decrease rapidly after the December 31, 1997 effective date for these voluntary terminations/cancellations. Therefore, the existing stocks provision listed in the notice of July 2, 1997 is amended to read:

> After December 31, 1997, methamidophos registrants may not sell or distribute any stocks of canceled methamidophos products or methamidophos products containing any terminated uses. Persons other than the registrant will be permitted to sell, distribute, and use the product until their supplies are exhausted.

2. *Comment from Bayer Corporation*. A comment was received by the Agency from Bayer Corporation inquiring about several 24(c) registrations that currently exist for cotton use only. Bayer Corporation questioned that since cotton is one of the crops being maintained on the section 3 label language would it be allowable to maintain these existing 24(c) labels as well. These 24(c)'s were not listed in the July 2, 1997 **Federal Register** notice as cancellations. The 24(c)'s in question are: CA790188, AR810044, AR870007, MS810014 and MS810055.

*Agency response*. The Agency agrees that since these 24(c) registrations are only for the agricultural crop cotton, and this crop has been retained under a FIFRA section 3 registration they may be maintained.

3. *Comment from Tomen Agro, Incorporated*. A comment was received by the Agency from Tomen Agro, Inc. requesting that the tolerances for the canceled crop uses be retained in 40 CFR 180.315 because these commodities are being legally treated in other countries and imported into the United States. Withdrawal of these tolerances would be disruptive to international trade associated with these commodities.

*Agency response*. As an administrative matter, the Agency normally proposes to revoke the existing tolerance for a crop shortly after the agricultural use has been terminated. However, as commenters have expressed an interest in leaving the tolerances in place and as these cancellations were a voluntary measure by the registrants and were not due to any dietary risk to humans posed by methamidophos residues on these food crops, the Agency will not propose to revoke, at this time, the tolerances for the terminated or canceled crop uses listed in 40 CFR 180.315.

Under section 408(l)(5) as amended by The Food Quality Protection Act of 1996 (FQPA), food lawfully treated, prior to the cancellation notice and crops treated with existing stocks, will not be rendered adulterated despite the lack of a tolerance, so long as the residue on the food complies with the tolerance in place at the time of treatment. These tolerances will be modified or revoked at the time that the Reregistration Eligibility Decision (RED) document is published (presently scheduled for 1998), and the results of the tolerance reassessment will be published in a **Federal Register** notice.

## III. Final Actions and Existing Stocks Provision

This notice terminates (by use deletion from section 3 registrations) the use of methamidophos on broccoli, Brussels sprouts, cabbage, cauliflower, celery, and sugar beets, and the section 24(c) registrations labeled for melons, cucumbers, lettuce, alfalfa, bermuda grass, peppers, clover, and eggplant are canceled. These terminations and cancellations are effective December 31, 1997. The Agency has determined that after December 31, 1997, methamidophos registrants may not sell or distribute any stocks of canceled methamidophos products or methamidophos products containing any terminated uses. Persons other than the registrant will be permitted to sell, distribute, and use the product until their supplies are exhausted.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 17, 1997.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 97–33456 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2244]**

## Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 17, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed January 7, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must

be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended (CC Docket No. 96–61).

*Number of Petitions Filed:* 5.

*Subject:* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications act of 1996 (CC Docket No. 96–128).

*Number of Petitions Filed:* 11.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 97–33425 Filed 12–22–97; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness (REP) Program

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** In accordance with FEMA Rule 44 CFR Part 354, published in the **Federal Register** on March 24, 1995, (60 FR 15628), FEMA has established a fiscal year (FY) 1998 hourly rate of $31.46 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's REP Program.

**DATES:** This user fee hourly rate is effective for FY 1998 (October 1, 1997, to September 30, 1998).

**FOR FURTHER INFORMATION CONTACT:** Mr. O. Megs Hepler, III, Division Director, Exercises Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2867.

**SUPPLEMENTARY INFORMATION:** As authorized by Public Law 105–65 (111 Stat. 1377), an hourly user fee rate of $31.46 will be charged to NRC licensees of commercial nuclear power plants for all site-specific biennial exercise related services provided by FEMA personnel for the REP Program. This hourly user fee rate will be charged in accordance with the provisions of 44 CFR 354, published in the **Federal Register** on March 24, 1995, (60 FR 15628). All funds collected under this rule will be deposited in the U.S. Department of the Treasury to offset appropriated funds obligated by FEMA for the REP Program.

The hourly rate is established on the basis of the methodology set forth in FEMA Rule 44 CFR 354.4(b), ''Determination of site-specific biennial exercise-related component for FEMA personnel,'' and will be used to assess and collect fees for site-specific biennial exercise related services rendered by FEMA personnel.

The hourly rate is intended only to be applied to charges to NRC licensees for services provided by FEMA personnel for the site-specific biennial exercise-relate component referenced above, not for charges for services provided by FEMA personnel under the flat fee component referenced at 44 CFR 354.4(d) nor for services provided by FEMA contractors. Services provided by FEMA contractors will be charged in accordance with 44 CFR 354.4 (c) and (d) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

Dated: December 16, 1997.

**Kay C. Goss,**

*Associate Director for Preparedness, Training, and Exercises.*

[FR Doc. 97–33433 Filed 12–22–97; 8:45 am]

BILLING CODE 6718–06–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight fowarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pacat International-Pacific Atlantic International, 1019 Fairway Valley Drive, Woodstock, GA 30189, Gunter Wegner, Sole Proprietor

Trafik Services, Inc., 300 Wapanoag Trial, East Providence, RI 02915, Officers: Robert A. Mega, President, William Mega, Vice President.

Dated: December 17, 1997.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 97–33366 Filed 12–22–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 7, 1998.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

*1. Marlen E. Bents*, Ceylon, Minnesota; to retain 24.3 percent, and acquire an additional .8 percent of the voting shares of Ceylon Bancorporation, Inc., Ceylon, Minnesota, and thereby indirectly acquire State Bank of Ceylon, Ceylon, Minnesota.

Board of Governors of the Federal Reserve System, December 18, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–33459 Filed 12–22–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Buckhead Community Bancorp, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Buckhead Community Bank, N.A., Atlanta, Georgia (in organization).

Board of Governors of the Federal Reserve System, December 18, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–33460 Filed 12–22–97; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL TRADE COMMISSION

### Charges for Certain Disclosures

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice regarding charges for certain disclosures.

**SUMMARY:** The Federal Trade Commission announces that the current ceiling on allowable charges under Section 612(a) of the Fair Credit Reporting Act (FCRA) will remain unchanged for 1998. Under recent amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. Since the FCRA amendments only took effect on September 30, 1997, the modified amount shows no increase based on the Consumer Price Index for the period in question, and remains at $8.00.

**EFFECTIVE DATE:** January 1, 1998.

**ADDRESSES:** Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Lisa Marie Daniel, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3394.

**SUPPLEMENTARY INFORMATION:** The Fair Credit Reporting Act, originally enacted in 1970,[1] was extensively amended in 1996. Most of the amendments to the law, including that which is discussed in this notice, went into effect on September 30, 1997. Section 612(a)(1)(A) states that, except as provided in certain subsections, a consumer reporting agency may impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, which charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission (''the Commission'') shall increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index (CPI), with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the time the amended FCRA took effect, i.e., September 30, 1997. In November of each year, the Commission will calculate the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) for the twelve months dating from September 30th of the previous year to September 30th of the current year. The Commission will then determine what modification, if any, from the original base of $8 should be made effective on January 1 of each subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

The Commission determines that there will be no modification from the base of $8.00 for January 1, 1998, as the Act only went into effect on September 30, 1997.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–33438 Filed 12–22–97; 8:45 am]

**BILLING CODE 6750–01–M**

[1] 15 U.S.C. Sections 1681–1681u; Title VI of the Consumer Credit Protection Act.

## FEDERAL TRADE COMMISSION

**[File No. 971–0087]**

### CUC International Inc.; HFS Incorporated; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 23, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–2932. Jacqueline K. Mendel, Federal Trade Commission, 6th & Pennsylvania Ave., NW, S–2308, Washington, DC 20580. (202) 326–2603.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the about-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 17, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its

principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from CUC International Inc. (''CUC'') and HFS Incorporated (''HFS'') (collectively, ''the Parties'') under which the Parties would be required to divest Interval International Inc. (''Interval''), one of two worldwide full-service timeshare exchange service companies, to Interval Acquisition Corporation (''IAC''). IAC is controlled by a venture capital firm, Willis Stein & Partners, L.P., and includes Interval's current management. The buying group also includes Marriott Ownership Resorts, Inc., a subsidiary of Marriott International, Inc., Hyatt Vacation Ownership Resorts, Inc., and Carlson Companies, Inc. If the sale of Interval is not made to the Willis Stein buying group, the Parties are required to divest Resort Condominiums International, Inc. (''RCI''), the other worldwide full-service timeshare exchange service company, currently owned by HFS. The agreement is designed to remedy the anticompetitive efforts resulting from CUC's acquisition of HFS.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Public comment is invited regarding all aspects of the agreement including the proposed divestiture of Interval to IAC. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order. If the Commission decides after the public comment period that IAC is not an acceptable acquirer, the Parties have 120 days to divest either Interval or RCI to another Commission-approved buyer.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the worldwide sale of timeshare exchanges services.

The relevant market in which to analyze the effects of the proposed transaction is the sale of timeshare exchange services on a worldwide basis. An important benefit of timeshare ownership (also known as vacation ownership) is the right to exchange the use of that unit for another comparable unit at a different resort property (or at the same resort for another time period). The owner of a particular resort unit relies on the timeshare exchange company to provide the exchange properties and to process the exchange. Exchange companies grade and rate time periods as well as property quality.

CUC's acquisition of HFS will result in a virtual monopoly in the market for full-service timeshare exchanges. As a result, timeshare resort developers and owners would not have the same exchange opportunities if they did not use the services of the merged company. Therefore, after the acquisition, CUC would have the ability to increase prices for the sale of timeshare exchange services to both groups of customers, as well as decrease the level of services provided.

Further, timely entry in the market for the sale of timeshare exchange services on the scale necessary to offset the competitive harm resulting from the combination of CUC and HFS is highly unlikely because there are significant network externalities that lead to high entry barriers. Like telephones, fax machines and automated teller machines, membership in a timeshare exchange requires other people with whom to interact. The owner of an interest in a timeshare resort would have no reason to join a timeshare exchange that had no other members. And the more members (i.e., potential exchange partners) that belong to an exchange, the more attractive the exchange becomes to other potential market participants. Attaining the critical mass required to be a viable competitor would take many years because timeshare developers consider joining a timeshare exchange only if it includes other quality resorts. Timeshare owners, in turn, want to affiliate with exchanges that give them the broadest timeshare vacation choices. Thus, a new timeshare exchange would not enter effectively unless it could provide consumers a level of timeshare vacation choices comparable to those offered by RCI or Interval.

Developing a timeshare exchange comparable to RCI and Interval would be a difficult endeavor. First, most resorts sign exclusive, multi-year contracts with one timeshare exchange. The lengthy terms of these contracts effectively prevent new entrants from securing a sufficient base of resorts to become competitive. Second, individual resorts would be reluctant to leave the established exchanges and affiliate with a new exchange that did not offer a catalog of opportunities comparable to that of the existing exchanges. Timeshare exchange affiliation is an important sales tool for timeshare resort developers, who must offer an array of exchange opportunities that is competitive with those offered by other developers. Finally, there are significant supply side economies of scale associated with the sophisticated computer systems necessary to operate the exchanges.

No significant efficiencies would result from the merger of RCI and Interval. Although consumers might receive some marginal benefit from dealing with an exchange with additional properties listed, that benefit does not outweigh the substantial loss of competition between the two exchanges. Customers did not perceive any additional benefit from the merger of the two exchanges. Moreover, the fact that Interval is a strong competitor even though it is smaller than RCI suggests that both firms have already achieved the requisite network externalities and that a merger would not provide any significant incremental benefit.

The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the acquisition. Under the proposed Consent Order, the Parties are required to divest Interval to IAC within ten days CUC's acquisition of HFS. In the event that the Parties do not satisfy that requirement, they must divest RCI, the larger timeshare exchange service, within six months of signing the consent agreement. The Commission may appoint a trustee to divest RCI if the Parties do not do so. In the event that the Commission decides to reject IAC as the acquirer of Interval when making the order final after the public comment period, the Parties must rescind the divestiture to IAC, and would have 120 days to divest either Interval or RCI to a Commission-approved acquirer.

The Commission has not required a hold separate agreement in this case because: (1) The proposed Order contemplates a short divestiture time period and (2) the Order contains crown jewel provisions that would substitute a larger asset package if the Parties fail to accomplish the divestiture required under the Order.

Under the provisions of the proposed Order, the Parties are required to provide the Commission with a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date this Order becomes final, and every thirty (30) days

thereafter until the required divestiture is completed.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute interpretation of the agreement and proposed Order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–33439 Filed 12–22–97; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL SERVICES ADMINISTRATION

### Federal Acquisition Policy Division, FAR Secretariat Revision of Standard Forms

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The General Services Administration/FAR Secretariat has revised SF 1423, Inventory Verification Survey, SF 1426, Inventory Schedule A-Metals in Mill Product Form; SF 1428, Inventory Schedule B; SF 1430, Inventory Schedule C—(Work-In-Process); SF 1432, Inventory Schedule D—(Special Tooling and Special Test Equipment); SF 1434, Termination Inventory Schedule E (Short Form for Use With SF 1438 Only) to remove the need for particular certification requirements, and update the burden statement.

Since these forms are authorized for local reproduction, you can obtain new camera copy in three ways:

On the U.S. Government Management Policy CD–ROM;

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

**FOR FURTHER INFORMATION CONTACT:**

FAR Secretariat, (202) 501–4755. This contact is for information on completing the form and interpreting the FAR only.

**DATES:** Effective December 23, 1997.

Dated: December 16, 1997.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer.*

[FR Doc. 97–33472 Filed 12–22–97; 8:45 am]

BILLING CODE 6820–34–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Safety and Occupational Health Study Section; NIOSH Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

*Times and Dates:* 8 a.m.–5:30 p.m., February 12, 1998. 8 a.m.–5:30 p.m., February 13, 1998.

*Place:* Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia, 22314.

*Status:* Open business session, 8 a.m.–8:30 a.m., February 12, 1998; Closed evaluation sessions 8:30 a.m.–5:30 p.m., February 12, 1998; and 8 a.m.–5:30 p.m., February 13, 1998.

*Purpose:* The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

*Matters to be discussed:* The meeting will convene in open session from 8 a.m.–8:30 a.m. on February 12, 1998, to address matters related to the conduct of Study Section business. The meeting will proceed in closed session from 8:30 a.m. until scheduled adjournment (5:30 p.m.) on February 12, 1998. The meeting will continue in closed session from 8 a.m. until scheduled adjournment (5:30 p.m.) or earlier on February 13, 1998. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: December 17, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–33412 Filed 12–22–97; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0510]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for manufacturers of medicated animal feeds.

**DATES:** Submit written comments on the collection of information by February 23, 1998.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR

1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Current Good Manufacturing Practice Regulations for Medicated Feeds—(21 CFR Part 225)—(OMB Control Number 0910–0152—Reinstatement)**

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (CGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for CGMP's have been codified under part 225 (21 CFR 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to ensure that proper quality control is maintained. Such records would, e.g., contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e., batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds, to investigate violative drug residues in products from treated animals, and to investigate product defects when a drug is recalled. In addition, FDA will use the CGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to ensure that their feeds meet the requirements of the act as to safety and also meet their claimed identity, strength, quality, and purity as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs which FDA has determined requires more control because of the need for a withdrawal period before slaughter or carcinogenic concerns. Conversely, for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control, a license is not required and the recordkeeping requirements are less demanding. Respondents to this collection of information are commercial feed mills and mixer-feeders.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 225.42(b)(5) through (b)(8) | 1,600 | 24 | 38,400 | 0.41 | 16,000 |
| 225.58(c) and (d) | 1,600 | 24 | 38,400 | 0.25 | 9,600 |
| 225.80(b)(2) | 1,600 | 24 | 38,400 | 0.16 | 6,400 |
| 225.102(b)(1) through (b)(5) | 1,600 | 24 | 38,400 | 1.0 | 38,400 |
| 225.110(b)(1) and (b)(2) | 1,600 | 24 | 38,400 | 0.25 | 9,600 |
| 225.115(b)(1) and (b)(2) | 1,600 | 24 | 38,400 | 0.25 | 9,600 |
| Total | | | | | 89,600 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 225.42(b)(5) through (b)(8) | 200 | 3 | 600 | 0.16 | 100 |
| 225.58(c) and (d) | 200 | 3 | 600 | 0.16 | 100 |
| 225.80(b)(2) | 200 | 3 | 600 | 0.083 | 50 |
| 225.102(b)(1) through (b)(5) | 200 | 3 | 600 | 0.5 | 300 |
| 225.110(b)(1) and (b)(2) | | | | [3] | |
| 225.115(b)(1) and (b)(2) | | | | [3] | |
| Total | | | | | 550 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.
[3] There is no burden because medicated feeds are consumed on site (225.110 Distribution Records; 225.115—Complaint files).

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 225.142 | 13,000 | 24 | 316,800 | 0.41 | 132,000 |
| 225.158 | 13,000 | 24 | 316,800 | 0.25 | 79,200 |
| 225.180 | 13,000 | 24 | 316,800 | 0.16 | 52,800 |
| 225.202 | 13,000 | 24 | 316,800 | 1.5 | 475,200 |
| Total | | | | | 739,200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 225.142 | 45,000 | 3 | 135,000 | 0.16 | 22,500 |
| 225.158 | 45,000 | 3 | 135,000 | 0.16 | 22,500 |
| 225.180 | 45,000 | 3 | 135,000 | 0.083 | 11,250 |
| 225.202 | 45,000 | 3 | 135,800 | 0.5 | 67,500 |
| Total | | | | | 123,750 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33487 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 94N–0376]**

### Plascon, Inc., dba Anderson Plasma Center; Denial of Request for a Hearing and Revocation of U.S. License No. 572–003

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is denying the request for a hearing and revokes the establishment license (U.S. license number 572–003) and product license issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma. The agency finds that there is no genuine and substantial issue of fact justifying a hearing on the revocation of Plascon's licenses. The licenses are revoked due to the firm's failure to comply with the applicable biologics regulations and license standards designed to ensure the safety, purity, and potency of the manufactured products.

**DATES:** The revocation of the establishment license (U.S. License No. 572–003) and product license is effective December 23, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of November 17, 1995 (60 FR 57719), FDA announced an opportunity for a hearing on its proposal to revoke the establishment license (U.S. License No. 572–003) and product license issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma (60 FR 57719). By letter dated December 12, 1995, Plascon requested a hearing on the proposed revocation. The agency is denying the request for a hearing and is revoking U.S. License No. 572–003, which includes the establishment license and product license, because the agency finds there is no genuine and substantial issue of fact regarding the basis for the proposed revocation for the firm's failure to comply with applicable Federal regulations and license standards. FDA has documented Plascon's failure to conform to such standards during inspections of Plascon in 1989, 1991, 1992, and 1993.

During a December 1989 inspection of Plascon, FDA investigators documented numerous deviations from the current good manufacturing practice (CGMP) regulations. The deviations included, but were not limited to, the following: (1) Failure to adequately determine donor suitability (part 606 (21 CFR part 606)) (§ 606.100(b)(1)) and (part 640 (21 CFR part 640)) (§ 640.63(c)); (2) failure to maintain accurate donor records (§ 606.160(b)(1)); (3) failure to ensure that personnel were competent in the performance of their duties (§ 606.20(b)); and (4) poor record keeping practices related to quality control, equipment calibration, and maintenance (§ 606.160(b)(5) and (b)(7)).

An FDA inspection of Plascon in September 1991 revealed similar CGMP deficiencies, as well as additional violations, including: (1) Failure to follow the standard operating procedures (SOP's) for documenting donor weight loss of 10 or more pounds or referring these donors to the physician on call (§ 606.100); (2) failure to record donor blood losses (§ 606.160(b)); (3) failure to maintain adequate facilities (§ 606.40); and (4) failure to properly maintain equipment (§ 606.60).

During an inspection of Plascon from August through October 1992, FDA inspectors found CGMP deviations similar to those documented during the

previous two inspections, despite Plascon's assurances that the firm was in compliance with Federal regulations. The violations observed during this inspection included: (1) Failure to adequately investigate donor adverse reactions (§§ 606.170(a), 606.100(b)(9), and 606.160(b)(1)(iii)); (2) failure to maintain complete and accurate records of donors (§ 606.160(b)(1)); (3) failure to maintain the plasma at a proper storage temperature (§§ 606.100(b)(10) and 640.76(a)(1)); (4) failure to adequately observe, standardize, or calibrate equipment (§§ 606.100(b)(15) and 606.60); (5) failure to maintain adequate facilities (§ 606.40); and (6) failure to follow SOP's (§ 606.100). FDA issued a warning letter to Plascon on November 12, 1992. In the warning letter, FDA stated that Plascon was responsible for ensuring that operations at all of its centers were in full compliance with the Federal Food, Drug, and Cosmetic Act (the act), 21 U.S.C. 301 *et seq.*, and its implementing regulations, and requested that Plascon take prompt action to correct the deviations noted. The warning letter notified Plascon that failure to take prompt corrective action could result in regulatory action without further notice, including license suspension and/or revocation. On January 6, 1993, Plascon sent a letter to FDA promising corrective action.

FDA conducted another inspection of Plascon in July 1993 and documented continued deficiencies, including: (1) Failure to adequately determine donor suitability (§§ 606.100(b)(1) and 640.63(c)); (2) failure to maintain adequate facilities (§ 606.40); and (3) failure to provide adequate equipment maintenance (§ 606.60).

At the conclusion of each of these inspections, FDA issued to Plascon a list of observations from the inspection (Form FDA–483), which detailed Plascon's continuing noncompliance with the applicable regulations and license standards. After each inspection, Plascon promised corrective action.

Subsequently, FDA conducted an inspection of Plascon on December 11 through December 17, 1993, and FDA again documented numerous CGMP deviations. The CGMP violations observed included the following, among others: (1) Failure to adequately determine donor suitability (§§ 606.100(b)(1) and 640.63(c)); (2) failure to investigate adverse donor reactions (§ 606.170(a)); (3) failure to perform adequate physical examinations on donors (§ 640.63(b) and (c)); (4) failure to perform and maintain records of quality control for equipment and reagents (§§ 606.60(a), 606.160(b)(5) and (b)(7)); and (5) failure to maintain complete and accurate records and to follow SOP's (§§ 606.160(b) and 640.65(b)(3)).

Due to the serious nature of the deviations from the applicable regulations and the standards in Plascon's licenses, which the agency determined to constitute a danger to health, on January 11, 1994, FDA suspended Plascon's licenses and denied the firm's pending license supplements for automated collection of Source Plasma. FDA's suspension letter noted that the basis for the suspension was Plascon's serious noncompliance with donor protection standards that are designed to assure a continuous and healthy donor population, and the firm's noncompliance with standards designed to assure the continued safety, purity, potency, and quality of the manufactured products. (Letter from FDA to Plascon, January 11, 1994, at p. 4.) The suspension letter stated that ''[t]he nature of the deficiencies * * * leads us to conclude that they are a direct consequence of [Plascon's] disregard for the applicable regulations and standards in [Plascon's] license application.'' (*Id.*) The suspension letter notified Plascon that its licenses were suspended and that FDA would proceed to revoke Plascon's licenses unless the firm requested that revocation be held in abeyance pending resolution of the matters involved and provided FDA with a written description of the ''specific actions taken to correct all deficiencies noted'' in the suspension letter.

By letter dated January 20, 1994, Plascon requested that FDA hold the proposed revocation of its licenses in abeyance and extend until January 31, 1994, the time for Plascon to prepare and submit a corrective action plan. On January 27, 1994, FDA granted the request for a time extension to submit the corrective action plan. By letter dated January 28, 1994, Plascon requested that FDA extend until February 21, 1994, the time for Plascon to submit a corrective action plan. On February 10, 1994, FDA granted the second-time extension request. By letter dated February 21, 1994, Plascon submitted its corrective action plan to FDA.

After considering Plascon's corrective action plan, FDA, by letter dated May 5, 1994, denied the firm's request that the license revocation be held in abeyance. FDA explained that the

''current and previous inspections of [Plascon] have revealed continuing significant deviations from applicable regulations and standards specified in [Plascon's] license and establish[] a pattern of failure to implement appropriate and lasting corrections of these deviations.''

(Letter from FDA to Plascon dated May 5, 1994, at p. 1.) FDA advised Plascon that its corrective action plan was incomplete and inadequate and detailed some of the plan's inadequacies. In addition, FDA explained that the ''nature of the deficiencies and continued noncompliance * * * demonstrates careless disregard for the applicable regulations and the standards of [Plascon's] license.'' (*Id.* at p. 2.) FDA's letter notified Plascon that ''[i]n cases involving willfulness, the agency need not provide an opportunity for the licensee to demonstrate or achieve compliance,'' and that FDA was ''initiating proceedings to revoke'' Plascon's licenses. (*Id.*)

Subsequently, in the **Federal Register** of November 17, 1995, FDA announced a notice of opportunity for a hearing (NOOH) on the proposed revocation of the establishment license and product license issued to Plascon. In the NOOH, FDA advised Plascon that a request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing (60 FR 57719 at 57720). The NOOH further stated that if it appeared conclusively from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there was no genuine and substantial issue of fact for resolution at a hearing, the Commissioner of Food and Drugs (the Commissioner) would deny the hearing request (60 FR 57719 at 57720).

In a letter dated December 12, 1995, Plascon requested a hearing on the proposed license revocation. On January 12, 1996, Plascon submitted ''data and information'' in support of its request. (See § 12.24 (21 CFR 12.24).) In its letter, Plascon stated that the firm ''does not deny that during a series of inspections between 1989 and 1993 by FDA inspectors, a variety of deviations from the applicable federal regulations were observed.'' (Letter from Plascon to FDA, January 12, 1996, at p. 1–2.) However, Plascon argued that FDA's determination that Plascon's continued operation posed a danger to health was not supported by an adequate factual basis. Plascon argued that a ''reasonable and valid connection must be established between the deviations noted [by FDA] and the 'danger to health' alleged.'' (*Id.* at p. 1.) Plascon further argued that a hearing was necessary so that the ''largely unsupported conclusion of a public health danger can be set forth, explored, and tested during the course of a hearing.'' (*Id.*)

Plascon's letter of January 12, 1996, also referred to and enclosed a letter that Plascon sent to FDA on June 29, 1994, regarding the disposition of inventory of Source Plasma on hand at Plascon when FDA suspended Plascon's licenses. In its June 29, 1994, letter, the firm stated that it did not seek to ''justify or minimize the deviations from regulatory requirements that were observed during the various FDA inspections'' (letter from Plascon to FDA, June 29, 1994, at p. 2), and conceded that the conditions at Plascon's facilities during the December 1993 inspection were ''deplorable.'' (*Id.* at p. 3.) Nevertheless, Plascon argued that ''the safety, purity, potency, and quality of much of the Source Plasma collected during that time period can indeed be assured.'' (*Id.* at p. 2.)

## II. Applicable Regulations

In accordance to § 601.6 (21 CFR 601.6), whenever the Commissioner has reasonable grounds to believe that any of the grounds for revocation of a license exist, and that by reason thereof there is a danger to health, he may notify the licensee that his license is suspended (§ 601.6(a).) Upon suspension of a license, the Commissioner shall either: (1) Proceed in accordance to the provisions of § 601.5(b) (21 CFR 601.5(b)) to revoke the license; or (2) if the licensee agrees, hold revocation in abeyance pending resolution of the matters involved (§ 601.6(b).)

The grounds for revocation are set forth at § 601.5(b). In accordance to § 601.5(b)(4), if the Commissioner finds that the establishment or the product for which a license has been issued fails to conform to the applicable standards established in the license and the regulations designed to ensure the continued safety, purity, and potency of the manufactured product, he shall notify the licensee of his intention to revoke the license, setting forth the grounds for, and offering an opportunity for a hearing on, the proposed revocation. Except as provided in § 601.6 or in cases involving willfulness, the notification of intent to revoke shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the applicable requirements before proceedings will be instituted for revocation of the license (§ 601.5(b).)

The procedures for hearings on the revocation of biologics licenses are set forth in part 12 (21 CFR part 12). (See § 601.7.) The criteria for deciding whether to grant or deny a hearing are stated in § 12.24(b). These regulations provide that a request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing (§ 12.24(b)(1)(2).) If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that requires a hearing on the revocation of the license, the Commissioner will deny the hearing request and enter summary judgment against the licensee. (§ 12.24(b)(1); see also *Costle* v. *Pacific Legal Found.*, 445 U.S. 198, 214–15 (1980); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–21 (1973).) Moreover, where the issues raised in the hearing request are, even if true, legally insufficient to alter the decision, the Commissioner need not grant a hearing. (§ 12.24(b)(4) (hearing request will not be granted ''if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought'').) Therefore, to warrant a hearing, Plascon must set forth a genuine and substantial issue of fact concerning the grounds for revocation of its licenses.

## III. Plascon's Hearing Request and the Commissioner's Findings

Plascon's challenge to the proposed revocation of its establishment and product licenses is a narrow one. Plascon's hearing request and the data and information the firm submitted in support of its hearing request do not challenge whether Plascon failed to comply with applicable regulations and the standards set forth in the firm's licenses; instead, Plascon only disputes whether Plascon's deviations from FDA's regulations constitute a ''danger to health.'' (See, e.g., Letter from Plascon to FDA, January 12, 1996, p. 3 (''The fact that there were deviations from regulatory requirements * * * does not automatically establish that a 'danger to health' was present. Danger to who? The employees? The donors? * * * These are factual issues that require exploration at the requested hearing * * *'').) For the reasons set forth below, the agency finds that there is no genuine and substantial issue of fact justifying a hearing and therefore denies Plascon's request for a hearing.

Before proceeding to the basis for Plascon's request for a hearing, the agency notes that FDA's decision to initiate revocation proceedings without providing Plascon with a further opportunity to demonstrate or achieve compliance was appropriate. As noted above, FDA's regulations provide:

> Except as provided in [21 CFR] 601.6 or in cases involving willfulness, the notification [of intent to revoke] shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the requirements of this chapter, before proceedings will be instituted for revocation of the license.

(§ 601.5(b).)

After FDA suspended Plascon's licenses in January 1994, in response to Plascon's request, FDA held revocation of the firm's licenses in abeyance pending resolution of the matters involved. (See § 601.6(b).) FDA's January 11, 1994, suspension letter notified Plascon that FDA would proceed with revocation unless, *inter alia*, the firm notified FDA in writing of the:

> specific actions taken to correct all deficiencies noted in this letter including a detailed explanation of all retraining of all personnel as well as the means by which such training is to be evaluated.

(Letter from FDA to Plascon, January 11, 1994, at p. 6.)

FDA granted both of the extensions that Plascon requested for submission of a corrective action plan. Subsequently, after considering Plascon's February 21, 1994, submission, FDA advised Plascon by letter that the firm's corrective action plan was incomplete and inadequate and that the firm's claim that sufficient corrective actions would be implemented and sustained was not credible in light of the firm's careless disregard of the applicable regulations and standards. In this letter, FDA also notified Plascon that it no longer would hold the license revocation in abeyance and that the agency would initiate revocation proceedings. (Letter from FDA to Plascon, May 5, 1994, at p. 2.) Citing the May 5, 1994, letter, the November 17, 1995, NOOH also noted Plascon's ''careless disregard of the applicable regulations and standards'' and stated that FDA had advised Plascon ''that no additional time would be provided in which to demonstrate compliance'' before FDA would initiate revocation proceedings (60 FR 57710 at 57720).

The agency notes that Plascon's hearing request and the data and information it submitted in accordance to that request do not challenge the May 5, 1994, letter's assertion that Plascon had acted in careless disregard of the applicable regulations and standards. Similarly, the firm has not objected to FDA's decision to institute revocation proceedings without providing Plascon further opportunity to demonstrate or achieve compliance. (Letter from Plascon to FDA, December 12, 1995; Letter from Plascon to FDA, January 12, 1996.)

While the Commissioner does not need to reach the issue of whether FDA's decision not to provide further opportunity to demonstrate or achieve compliance was proper under § 601.5, he notes that § 601.5 requirements have been satisfied because Plascon's conduct was willful within the meaning of § 601.5. Courts that have considered the meaning of willfulness in the context of license revocation proceedings have noted that willful conduct can be found when a person acts with careless disregard of statutory requirements. (See, e.g., *Potato Sales Co., Inc.* v. *United States Dept. of Agric.*, 92 F.3d 800, 805 (9th Cir. 1996); *Cox* v. *United States Dept. of Agric.*, 925 F.2d 1102, 1105 (8th Cir. 1991), *cert. denied*, 502 U.S. 860 (1991); *Lawrence* v. *Commodity Futures Trading Corp.*, 759 F.2d 767, 773 (9th Cir. 1985); *Finer Food Sales Co.* v. *Block*, 708 F.2d 774, 778 (D.C. Cir. 1983); *American Fruit Purveyors Inc.* v. *United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981).) Plascon's pattern of continued noncompliance with the applicable license standards and regulations, despite ample notice from the FDA of the firm's noncompliance and repeated assurances from Plascon that the firm would come into compliance, demonstrates careless disregard of the applicable requirements. Thus, the agency finds that Plascon's conduct was willful within the meaning of § 601.5, and thus it was not necessary to provide Plascon with further opportunity to demonstrate or achieve compliance.

The next issue for consideration is whether the data and information Plascon submitted raise a genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1).) FDA's proposed revocation of Plascon's establishment and product licenses is based on Plascon's failure to adhere to the applicable regulations and the standards in Plascon's license application, not on a finding that these failures constitute a ''danger to health.'' (Letter from FDA to Plascon, May 5, 1994, at p. 1–3; 60 FR 57719.) FDA's focus on Plascon's failure to comply with the applicable regulations and standards conforms to the applicable regulations. (See § 601.5(b)(4).)

The grounds for revocation set forth in § 601.5(b)(4) have been established in this case. As described above, FDA's inspections documented Plascon's deviations from the applicable regulations and standards during four inspections between 1989 and 1993. Plascon has not only failed to submit any data and information challenging FDA's inspectional findings, but also has admitted that the firm failed to comply with the applicable regulations. Indeed, by the firm's own characterization, the conditions observed during the 1993 inspection, which led to the suspension and proposed revocation of Plascon's licenses, were ''deplorable.'' (See Letter from Plascon to FDA, June 29, 1994, at p. 3 (''[I]t is a source of great regret'' that the:

> conditions observed by FDA investigators * * * during the[] December 13–17, 1993 inspection of [Plascon] were so deplorable, resulting in the issuance of a Form FDA–483 with 66 inspectional observations * * * [T]he facility was not operating in an acceptable manner, and [Plascon] accepts full responsibility for that extremely unfortunate situation.);

see also *id.* at p. 2 (''Without for a moment seeking to justify or minimize the deviations from regulatory requirements that were observed during the various FDA inspections over the more than four year period of time * * *''); *id.* at p. 25 (''The final inspection, in December of 1993, was by far the 'worst' of these inspections * * *''); *id.* at 28 (''*if* the December 1993 inspection had been a completely successful one, instead of the disaster that it obviously was * * *''); Letter from Plascon to FDA dated February 21, 1994, Corrective Action Plan, at p. 2 (''Plascon, Inc. has terminated employees who were not following proper protocol during the most recent FDA inspection.'').)

Having conceded the existence of the ''deplorable'' conditions at Plascon, the firm confines its challenge to the proposed revocation of its licenses to whether FDA established the existence of a danger to health when the agency suspended Plascon's licenses on May 5, 1994. More specifically, Plascon argues that the regulatory deficiencies observed did not affect the quality of the Source Plasma manufactured by the firm and that FDA has not established the existence of a ''danger to health.'' (Letter from Plascon to FDA dated January 12, 1996, at p. 1.) However, while the issue of whether the Commissioner had reasonable grounds to believe that by reason of the existence of the grounds for revocation of Plascon's licenses there was ''a danger to health'' was relevant to the decision to *suspend* the firm's licenses, it has no bearing on the *revocation* of those licenses under § 601.5(b).

Plascon's hearing request will be granted only if the material submitted shows that there is a genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1)). A hearing will not be granted on factual issues that are not determinative with respect to the action requested (§ 12.24(b)(4)). As the District of Columbia Circuit Court of Appeals observed, ''Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.'' *Copanos & Sons* v. *FDA*, 854 F.2d 510, 523 (D.C. Cir. 1988). Plascon's hearing request raises only an irrelevant factual dispute, the resolution of which, even if in Plascon's favor, would have no bearing on the merits of the revocation of its licenses.

For the reasons set forth above, the agency finds that Plascon, Inc., doing business as Anderson Plasma Center, has failed to show that there is a genuine and substantial issue of fact justifying a hearing on the revocation of its establishment and product licenses. The agency also finds that significant deviations from the biologics regulations and the standards set forth in the firm's licenses existed which warrant revocation of Plascon's licenses. Therefore, under section 351 of the Public Health Service Act (42 U.S.C. 262) and under §§ 12.28, 601.5, and 601.7, the Commissioner denies the request for a hearing and revokes the establishment (U.S. License No. 572–003) and product licenses issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33373 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Program Announcement Number FDA–CFSAN–98–1 Cooperative Agreement for Validation of Analytical Methods, Standards, and Procedures

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), is announcing its intention to accept and consider a single source application for award of a cooperative agreement to support AOAC International in the amount of $100,000. The cooperative agreement will provide support for the Validation of Analytical Methods, Standards, and Procedures.

**DATES:** Submit applications by January 6, 1998.

**ADDRESSES:** An application is available from and should be submitted to Robert L. Robins (address below). Applications hand carried or commercially delivered should be addressed to the Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Regarding the administrative and financial management aspects of this notice: Robert L. Robins, Grants Management Officer, or Rosemary T. Springer, Grants Management Specialist, Office of Regulatory Affairs Support and Assistance Management Branch, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3–40, Rockville, MD 20857, 301–443–6170.

Regarding the programmatic aspects of this program: Bernadette McMahon, Office of Plant and Dairy Foods and Beverages (HFS–337), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4038.

**SUPPLEMENTARY INFORMATION:** FDA is announcing its intention to accept and consider a single source application from AOAC International for supporting the Validation of Analytical Methods, Standards, and Procedures. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance at section 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

## I. Background

Until 1979, AOAC International operated as part of the U.S. FDA, whose employees performed as Executive Director and Journal Editor, among other positions. At that time, on the recommendation of an independent panel, AOAC International became independent of FDA and was established as a nonprofit association.

Since the separation of FDA and AOAC International, FDA has continued to provide financial support to AOAC International through a cooperative agreement. In the beginning, FDA was motivated to ensure that AOAC International would have funds needed to continue publishing new editions (every 5 years) of *Official Methods of Analysis of AOAC (OMA)*, the compilation of all methods validated through the collaborative process, which is of interest to regulated industry. AOAC International no longer requires FDA's support to underwrite the publication of OMA, which is now AOAC International's main source of revenue. FDA's current support for AOAC International, both financially and with activities of its employees, is motivated by its recognition of AOAC International's critical role in organizing, operating, and maintaining an internationally recognized system for establishing collaborated methods of analysis. It is imperative to FDA that an organization such as AOAC International continue to function efficiently, especially in scientific areas in which internationally recognized analytical methods are required to support regulatory decisions.

AOAC International consists of the following members: A governing board (Board of Directors, including officers) concerned with administration and policy making; Official Methods Board; Editorial Board; special and standing committees which serve in advisory and liaison capacities; other groups concerned with development of methods, publication, and general activities; and the headquarters staff which conducts the day-to-day business.

In recent years, AOAC International has initiated additional activities aimed at the improvement of the analytical sciences, including training programs on critical subjects such as modern analytical technologies, application of quality assurance principles, and statistical principles and applications. The association established a Research Foundation to assess and certify commercial test kits, defined an additional level of validated methods (the ''peer verified'' methods), and is investigating the potential for developing analytical standard reference materials. AOAC International has embraced opportunities to use electronic media to distribute its validated methods and other supporting materials through use of the World Wide Web and CD-ROM formats.

## II. Purpose of Agreement

The primary purpose is to provide financial and scientific support for AOAC International cooperative volunteer system of scientific analytical methods development and approval. This system produces methods that meet predetermined levels of quality for analysis of foods, animal feeds, drugs and cosmetics; such methods are critical to the acceptability of regulatory analytical results performed by FDA and by the regulated industry. AOAC International has excelled in planning, coordinating, and managing the activities essential to developing tested analytical procedures applicable to a wide range of sample types of interest to industry, government, and academia. This is one of very few programs which provide methodology validated through a formal interlaboratory collaborative study process.

To accomplish this overall goal, AOAC International will:

1. Develop standards and criteria for evaluation of results in analytical methods validation, balancing the needs for statistical acceptability, international harmonization, and practicality in an era of shrinking fiscal resources.

2. Identify needs for new and improved analytical methods for food composition and safety, vitamins and nutrients, food additives, pesticide and industrial chemical residues, drug formulations, animal drug residues, cosmetics chemistry and microbiology, color additives and any other products or substances affecting the public health and safety.

3. Recruit and support logistically the volunteer experts necessary to the successful development, review, and testing of needed methods.

4. Apply quality assurance principles to validation studies.

5. Encourage FDA and regulated industry to do more related research in analytical sciences.

6. Sponsor and participate in international forums.

7. Promote wider use of validated methods.

8. Increase opportunities for interaction of FDA-related science in international activities.

AOAC International maintains no laboratories itself, conducts no research, performs no tests. The actual work of developing and testing methods is done by scientists of Federal, State, provincial and municipal regulatory agencies, colleges and universities, commercial firms, and other private laboratories.

AOAC International provides the framework within which the collaborative study process occurs. With AOAC International as a focal point of analytical expertise, sufficient cooperating volunteer members can be found to effect the complex process of testing a method simultaneously in multiple laboratories. AOAC International staff members facilitate logistics required for operations, including the necessary meetings, recruitment of volunteers and collaborating laboratories, the voting

process, and eventual publication in both the *Journal of AOAC International* and OMA. AOAC International's existence as an internationally recognized organization means that AOAC International official methods are internationally acceptable based on the association's prior efforts to ''harmonize'' standards of acceptability.Methods are developed and subjected to interlaboratory collaborative study by Associate Referees, under the guidance of General Referees and the Official Methods Board and its Committees. AOAC International staff and methods committee members assist in recruiting laboratories with appropriate expertise to participate in approved collaborative studies. Volunteer statisticians assigned to the Committee by AOAC International assist the Associate Referee in evaluating study results. If the statistical evaluation of analytical results demonstrates that the method is capable of producing accurate and precise results in multiple laboratories, it is recommended for official status. After assenting mail vote by the association, the description of the newly approved official method is incorporated by the editorial staff into the next annual revision of OMA; details of the collaborative study are published in the *Journal of AOAC International*.

AOAC International conducts an annual international meeting, which includes presentation of symposia, reports methods and collaborative studies, and deliberation decisions by the Official Methods Board and its Committees.

## III. Substantive Involvement by the FDA

FDA supports AOAC International under this cooperative agreement because the existence of AOAC Interantional and its programs benefits both FDA and other regulators monitoring regulated products; regulated industries benefit equally from these activities. The availability of validated methods also benefits FDA-regulated industry which needs validated analytical methods to comply with regulatory requirements under the Federal Food, Drug, and Cosmetic Act. Beyond the financial support, this agreement also commits FDA's personnel to participation in the scientific and administrative operations of AOAC International.

Members of AOAC International are chemists, microbiologists, toxicologists and others engaged in the analysis of foods, animal feeds, drugs, agricultural commodities and environmental matrixes. Members identify and develop methods to be tested and organize the interlaboratory validation studies. Members receive and review the results of validation studies. Members receive and review methods recommendations, and members study, devise and recommend policies and protocols addressing methods, validation studies, quality assurance, safety and statistical analysis.

FDA involvement in AOAC International activities continues at a high level, with a significant percentage of Associate and General Referee and Committee positions filled by FDA personnel. Any laboratory or individual may participate in the development, testing, and collaborative study of new or improved methods. The international voluntary participation among scientists in government, academic, and industry laboratories enhances the credibility and acceptability of methods and saves time and money through shared efforts and costs.

## IV. Review Procedure

This application will undergo dual peer review. An ad hoc review panel of experts will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Sciences Council.

## V. Mechanism of Support

### *A. Award Instrument*

Support for this program, if granted, will be in the form of a cooperative agreement. In 1998, FDA is providing approximately $100,000 for this award. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS Grants Policy Statement.

### *B. Length of Support*

The length of support will be one (1) year with the possibility of an additional four (4) years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

### *C. Memorandum of Understanding (MOU)*

FDA and AOAC International will develop a MOU to cover and clarify AOAC International's publication of FDA manuals.

## VI. Reporting Requirement

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

## VII. Application Due Date

Applications should be submitted to Robert L. Robins (address above) by January 6, 1998.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33371 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0160]**

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Nutrient Content Claims and Health Claims; Restaurant Foods'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** On September 17, 1997, the agency submitted the proposed information collection to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0349. The approval expires on November 30, 2000.

Dated: December 10, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33374 Filed 12-22-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0182]**

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requests for Samples and Protocols: Official Release'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 19, 1997 (62 FR 49244), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0206. The approval expires on November 30, 2000.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33375 Filed 12-22-97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0495]**

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices, Investigational Device Exemptions, Treatment Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** On August 25, 1997, the agency submitted the proposed information collection to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0348. The approval expires on October 31, 2000.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33481 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0264]**

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Information Required in a Premarket Notification Submission (21 CFR 807.87, 807.92, and 807.93) (OMB Control Number 0910–0281—Reinstatement)'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 16, 1997 (62 FR 38098), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0281. The approval expires on September 30, 2000.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33484 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0022]**

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notice of Availability of Sample Electronic Product'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 17, 1997 (62 FR 48870), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0048. The approval expires on November 30, 2000.

Dated: December 16, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–33485 Filed 12-22-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–6401]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Negative Case Action Review Process (NCA)/Annual Report and Supporting Regulations 42 CFR 431.800; *Form No.:* HCF–6401 OMB #0938–0300; *Use:* HCFA uses the NCA reviews to assure that beneficiaries are not being denied medical assistance that they are eligible for and that recipients are being given adequate and timely notice of termination. The results of NCA reviews are used by states and the Federal Government to identify problem areas and plan corrective action initiatives. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 6,770.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, *Attention:* Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 6, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 97–33399 Filed 12–22–97; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project: Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Title IV (OMB No. 0915–0206)*—Extension, No Change—The HRSA HIV-AIDS Bureau proposes to continue to collect aggregated data from 44 grantees and their 90 local service providers that are funded under Section 2671 of the Public Health Service Act (42 USC 300ff–71). Data are collected from grantees and providers on the organizational structures, service delivery approaches, numbers and demographic characteristics of clients served, service utilization, and activities related to outreach, prevention, and education. The data collection strategy includes six tables that the grantees and their local service providers use to submit information annually about program and client characteristics. The data collected are used within and outside the HIV-AIDS Bureau and HRSA to inform the administration and Congress about the Title IV program and are used by grantees and the HIV-AIDS Bureau for other planning and policy efforts. No changes to the data tables are planned. Burden estimates are as follows:

| Type of form | Number of Respondents | Responses per respondent | Average hours per response | Total burden hours |
|---|---|---|---|---|
| Designation of Local Reporting Entities | 44 | 1 | .25 | 11 |
| Local Network Profile | 134 | 1 | .5 | 67 |
| Service Mix Profile | 134 | 1 | 2.8 | 375 |
| Demographic and Clinical Status | 134 | 1 | 33.0 | 4,422 |
| Service Utilization Summary | 134 | 1 | 20.0 | 2,680 |
| Prevention and Education Activities | 134 | 1 | 4.0 | 536 |
| Total | 134 | | | 8,091 |

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before February 23, 1998.

Dated: December 17, 1997.

**Jane Harrison,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 97–33414 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Performance Outcome Demonstration Study—New**

Through Titles VII and VIII programs, the Bureau of Health Professions provides both policy leadership and support for health professions workforce enhancement and educational infrastructure development. An outcome-based performance measurement system is central to the ability of the Bureau to determine whether program support is meeting its national health workforce objectives, and to signal where program course correction is necessary.

In addition, the Government Performance and Results Act (GPRA) requires each agency to develop comprehensive strategic plans, to submit annual performance plans that set specific performance goals for each program activity, and to report annually on the actual performance achieved compared to the performance goals.

The Bureau of Health Professions has developed a comprehensive performance monitoring system (CPMS) which consists of cross-cutting indicators designed to capture the common activities across programs, cluster level indicators designed to capture common activities for programs with a similar focus, and program specific indicators designed to capture activities which are specific to selected individual programs. At the core of the Bureau's performance monitoring system are four cross-cutting goals with respect to workforce quality, supply, diversity and distribution. External customer input was utilized to validate the Bureau's proposed outcomes and indicators, and to assist with a preliminary assessment of the suitability of data sources. A pilot study of nine program sites within the Washington metropolitan area was completed to determine the availability of the data along with the clarity of the definitions and instructions. The results of the pilot indicate that these data can be collected from grantees.

A wider demonstration will be done to assess the ability of current grantees, in the second year of the project period or later, to supply the data without the benefit of a site visit and to further refine the definitions and instructions. Since data are collected by discipline, the estimate of burden hours per response is different for projects that involve a single discipline and projects that involve multiple disciplines.

As part of the demonstration study, grantees will be sent a Data System Questionnaire that asks for information on grantee capacity for using information technology to store and transmit data. This information will be used to determine the best way to use information technology when the CPMS is fully implemented. It is expected that the distribution and submission of the CPMS data forms will eventually be fully automated and that the data collection tool will be an interactive program which prompts respondents to report only those data relevant to their programs. Burden estimates are as follows:

| Type of respondent | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| Data System Questionnaire | 644 | 1 | 644 | .17 | 107 |
| CPMS Tables: Projects involving a single discipline | 511 | 1 | 511 | 8 | 4,088 |
| CPMS Tables: Projects involving multiple disciplines | 64 | 1 | 64 | 40 | 2,560 |
| Total | 644 | ..... | 1219 | ..... | 6,755 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 17, 1997.

**Jane Harrison,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 97–33417 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Meeting

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1998.

*Name:* National Advisory Council on Migrant Health (NACMH).

*Date and Time:* Starts: Thursday, January 22, 1998 at 9:00 am; Ends: Saturday, January 24, 1998 at 5:00 pm.

*Place:* Mayflower Park Hotel, 405 Olive Way, Seattle, WA, 206/382–6991.

The meeting is open to the public.

*Agenda*: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include a report on the current status of Welfare and Immigration Reform legislation, 1998 Recommendations, and nominations for new members to the Council.

The Council meeting is being held in conjunction with the Seventh Annual Western Migrant Stream Forum, January 23–25, 1998. The Stream Forum will take place at the Madison Renaissance Hotel, 515 Madison Street, Seattle, WA, 800/278–4159.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Room 7–5A1, Bethesda, Maryland 20814, Telephone 301/594–4302. Agenda Items are subject to change as priorities dictate.

Dated: December 17, 1997.

**Jane M. Harrison,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 97–33416 Filed 12–22–97; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed collection; comment request; Evaluation of PHS Small Business Innovation Research and NIH Small Business Technology Transfer Research Programs

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the PHS and National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**PROPOSED COLLECTION:** Title: The Small Business Innovation Research Grant Applications Phase I and Phase II, Small Business Technology Transfer Grant Applications Phase I and Phase II. *Type of Information Collection Request.* Revision of OMB No. 0925–0195, expiration 4/30/98. *Need and Use of Information Collection:* This study will assess the PHS Small Business Innovation Research and NIH Small Business Technology Transfer Research Program Application Forms. *Frequency of Response:* Annually. *Affected Public:* Business or for other for-profit organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3400. *Estimated Number of Responses per Respondent:* 1. *Average Burden per Response:* 32. *Estimated Total Annual:* 108,000. *Burden Hours Requested:* 108,000. The annualized cost to respondents is estimated at: 0. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points. (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automate, electronic, mechanical or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Sonny Kreitman, NIH SBIR/STTR Program Coordinator, Rockledge II, Rm. 0186, Bethesda, Maryland 20892–7910 or call non-toll free number 301–435–2770 or Fax 301–480–0146 or e-mail your request to sk13n@nih.gov.

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: December 10, 1997.

**Geoffrey E. Grant,**

*Director, Office of Policy for Extramural Research Administration.*

[FR Doc. 97–33383 Filed 12–22–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institution of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Science Education Partnership Award.

*Date:* February 3, 1998.

*Time:* 8:00 a.m.

*Place:* Holiday Inn Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, 301–652–2000.

*Contact Person:* Dr. Jill Carrington, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

*Purpose/Agenda:* To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, National Institutes of Health, HHS)

Dated: December 15, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–33381 Filed 12–22–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; National Advisory Research Resources Council and its Planning Subcommittee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR). This meeting will be open to the public as indicated below. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Katherine Kaplan, Public Affairs Specialist, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5144, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301)

435–0888, will provide a summary of the meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language, interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

*Name of Committee:* The Subcommittee on Planning of the National Advisory Research Resources Council

*Date of Meeting:* January 29, 1998

*Place of Meeting:* National Institutes of Health, 9000 Rockville Pike, Conference Room 3B31, Building 31, Bethesda, Maryland 20892.

*Open:* January 29, 7:30 a.m.–8:45 a.m.

*Purpose/Agenda:* To discuss policy issues.

*Name of Committee:* National Advisory Research Resources Council

*Date of Meeting:* January 29–30, 1998

*Place of Meeting:* National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, Maryland 20892.

*Open:* January 29, 9 a.m. until recess

*Closed:* January 30, 8:30 a.m. until 9:30 a.m.

*Open:* January 30, 10:00 a.m. until adjournment

*Purpose/Agenda:* Report of Center Director and other issues related to Council business.

*Executive Secretary:* Louise Ramm, Ph.D. Deputy Director, National Center for Research Resources, Building 31, Room 3B11, Bethesda, MD 20892, Telephone: (301) 496–6023.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: December 15, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–33382 Filed 12–22–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* January 5, 1998.

*Time:* 2:00 p.m.

*Place:* NIH, Rockledge 2, Room 4152, Telephone Conference.

*Contact Person:* Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* January 8, 1998

*Time:* 10:00 a.m.

*Place:* NIH, Rockledge 2, Room 4152, Telephone Conference.

*Contact Person:* Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

*Name of SEP:* Multidisciplinary Sciences.

*Date:* March 9–10, 1998.

*Time:* 8:00 a.m.

*Place:* Woodfin Suites, Rockville, Maryland.

*Contact Person:* Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* March 19–20, 1998.

*Time:* 8:30 a.m.

*Place:* Holiday Inn, Bethesda, Maryland.

*Contact Person:* Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 15, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–33380 Filed 12–22–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Pharmaceutical Compositions And Methods For Treatment of Hyperproliferative Epithelial Skin Diseases and Cancer

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. § 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the inventions embodied in the U.S. Patent Application SN 07/677,429 ''Pharmaceutical Compositions And Methods For Preventing Skin Tumor Formation And Causing Regression Of Existing Tumors'' filed 3/29/91 and U.S. Patent Application SN 08/389,845 ''Method For The Treatment Of Hyperproliferative Epithelial Skin Disease By Topical Application Of Hydroxylated Aromatic Protein * * *'' filed 2/2/95 now U.S. Patent 5,610,185 issued 3/11/97 to Nascent Pharmaceuticals, L.L.C. of San Francisco, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license field of use may be limited to: Therapeutics for treatment and prevention of various hyperproliferative skin diseases in humans.

**DATE:** Only written comments and/or applications for a license which are received by NIH on or before March 23, 1998 will be considered.

**ADDRESS:** Requests for copies of the patent or patent application, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Joseph G. Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301)

496–7056 ext. 244; Facsimile (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application.

**SUPPLEMENTARY INFORMATION:**

The 07/677,429 ('429) invention describes the use of Staurosporine and closely related compounds in treating precancerous conditions of the skin by topical application. Staurosporine has been known for at least a decade as an inhibitor of protein kinase C, a major cellular enzyme involved in cell signalling and second messenger systems.

The 08/389,845 ('845) invention is directed towards a method of treating hyperproliferative epithelial cell lesions by topical application of hydroxylated aromatic protein cross-linking compounds which are derived from cinnamic acid. These compounds utilize dual methods of action, that is, growth inhibition and protein cross linking. Both the '429 and '845 inventions may be applied towards a wide range of skin disorders, including warts, cervical tumors, pre-malignant lesions, basal carcinomas and squamous carcinomas.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. § 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. § 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. § 552.

Dated: December 9, 1997.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 97–33384 Filed 12–22–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 777965

*Applicant:* LSA, Irvine, California

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly *(Rhaphiomidas terminatus abdominalis)* in San Bernardino and Riverside Counties, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 837010

*Applicant:* Bruce Koebele, Pearl City, Hawaii

The applicant requests a permit to reduce and remove to possession specimens of plants *Achyranthes splendens* var. *rotundata* and *Chamaesyce skottsbergii* var. *kalaeloana* from the Naval Air Station, Barbers Point, Hawaii, in conjunction with scientific studies and the augmentation of existing populations for the purpose of enhancing their survival.

Permit No. 818627

*Applicant:* Oregon Department of Fish and Wildlife, Corvallis, Oregon

The applicant requests an amendment of his permit to take (capture, otolith mark, captively rear, sacrifice, and release) the Oregon chub *(Oregonichthys crameri)* in Lane and Linn Counties, Oregon, in conjunction with ecological research and growth rate studies for the purpose of enhancing its survival.

Permit No. 837434

*Applicant:* Dawn Lawson, Carlsbad, California

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp *(Branchinecta conservatio)*, longhorn fairy shrimp *(Branchinecta longiantenna)*, and vernal pool tadpole shrimp *(Lepidurus packardi)* in conjunction with presence or absence surveys in vernal pools located in Sacramento County, California for the purpose of enhancing their survival.

Permit No.'s 837303, 782703, 813545, 837306, 781084, 837580, 837447

*Applicants:* David M.H. Goodward, Grand Terrace, California; Michael Couffer, Corona Del Mar, California; Brock Ortega, Encinitas, California; Robert K. Lauri, Tustin, California; Anita M. Hayworth, Encinitas, California; Robert A. Weppler, Riverside, California; Larisa A. Roznowski, Tustin, California

These applicants request a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 837307

*Applicant:* Holly Boessow, El Cajon, California

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in Riverside, Orange, and San Diego Counties, California, and take (harass by survey) the Laguna Mountain skipper (*Pyrgus ruralis lagunae*) in San Diego County, California, in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 827493

*Applicant:* Brian M. Leatherman, Costa Mesa, California

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), southwestern willow flycatcher (*Empidonax trailii extimus*), and the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with presence or absence surveys throughout the species range in California and Nevada for the purpose of enhancing their survival.

Permit No. 837326

*Applicant:* Jimmy W. Meyer, Cantonment, Florida.

The applicant requests a permit to purchase in interstate commerce three pairs of captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing its propagation and survival.

Permit No. 795938

*Applicant:* EIP Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey, capture and release, collect voucher specimens) the Riverside fairy shrimp (*Streptocephalus wootoni*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing its survival.

Permit No. 837308

*Applicant:* John K. Konecny, Escondido, California.

The applicant requests a permit to take (locate, mark, and monitor nests; and capture, band, and release) the California least tern (*Sterna antillarum browni*), take (harass by survey; locate and monitor nests; capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax trallii extimus*) and take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*) in conjunction with population monitoring and presence or absence surveys in southern California for the purpose of enhancing their survival.

Permit No. 778195

*Applicant:* Helix Environmental, La Mesa, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 834488

*Applicant:* Gregg Miller, Tustin, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 837439

*Applicant:* Guy P. Bruyea, Hemet, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), Laguna Mountain skipper (*Pyrgus ruralis lagunae*), El Segundo blue butterfly (*Euphilotes battoides allyni*), Palos Verdes blue butterfly (*Glucopsyche lygdamus palosverdesensis*), and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) throughout each species' range in California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 788133

*Applicant:* Vincent Scheidt, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit Nos. 837760, 837581, 837579

*Applicants:* Kendall H. Osborne, Riverside, California; David C. Hawks, Riverside, California; Michael W. Gates, Riverside, California

The applicants request permits to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), Laguna Mountain skipper (*Pyrgus ruralis lagunae*), El Segundo blue butterfly (*Euphilotes battoides allyni*), Palos Verdes blue butterfly (*Glucopsyche lygdamus palosverdesensis*), and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) throughout each species' range in California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

**DATES:** Written comments on these permit applications must be received on or before January 22, 1998.

**ADDRESSES:** Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: December 16, 1997.

**Thomas Dwyer,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–33413 Filed 12–22–97; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies.

Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this next meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will hear status reports from subcommittees as well as some of the current efforts being undertaken by the Royalty Management Program.

**DATES:** The meeting will be held on Monday, January 26, 1998, 8:30 a.m.–4:00 p.m. Mountain time.

**ADDRESSES:** The meeting will be held at the Embassy Suites, Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231, telephone number (303) 696–6644.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3060, Denver, Colorado 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

**SUPPLEMENTARY INFORMATION:** The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of

Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: December 17, 1997.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 97–33377 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Cape Cod National Seashore Advisory Commission; Meeting; South Wellfleet, Massachusetts

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 23, 1998.

The Commission was reestablished pursuant to Pub. L. 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, South Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting 11/21/97
3. Reports of Officers
4. Report of Nickerson Subcommittee
5. Lower Cape water study update: Cape Cod Commission
6. Superintendent's Report
   Budget
   Highlands Center for Arts & Environment
   General Management Plan
   News from Washington
7. Old Business
8. New Business
9. Agenda for next meeting
10. Date for next meeting
11. Public comment
12 . Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

**Maria Burks,**

*Superintendent.*

[FR Doc. 97–33426 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for the remainder of calendar year 1998 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco, San Mateo, and at Point Reyes Station, California:

Wednesday, January 14: San Francisco, CA
Wednesday, February 11: San Mateo, CA
Wednesday, March 11: San Francisco, CA
Saturday, March 28: Point Reyes, CA
Wednesday, April 8: San Francisco, CA
Wednesday, May 13: San Francisco, CA
Saturday, May 16: Point Reyes, CA
Wednesday, June 10: San Francisco, CA
Wednesday, July 8: San Francisco, CA
Wednesday, August 13: San Francisco, CA
Wednesday, September 9: San Francisco, CA
Saturday, October 14: San Francisco, CA
Saturday, October 17: Point Reyes, CA
Wednesday, November 18: San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, unless otherwise publicly noticed. The March 28th meeting will begin at 1:30 p.m. Meetings in San Mateo County will be held at the San Mateo City Council Chambers, San Mateo City Hall, 330 West 20th Avenue, San Mateo, California. Some meetings now scheduled to be held in San Francisco may be held at public facilities in San Mateo County or Marin County. Information confirming the time and location of each of these Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 561–4633. Information confirming the time and location of all Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 556–4633.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaños
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Anticipated agenda items at meetings this year will include but be limited to the following:

- Redwood Creek restoration projects
- report and public comment on Fort Baker Comprehensive Plan and EIS
- Muir Woods Transportation Study
- Alcatraz historic structure stabilization and natural resource management public access projects
- review of Fort Mason historic building uses
- reports and review of the Cliff House Restoration Plan and other elements of the Sutro Design Plan
- San Mateo issues and SF Watershed issues
- Presidio Lobos Creek plans
- update report on the Presidio Trust activities
- Presidio Vegetation Management Plan
- update presentations on the GGNRA Presidio Natural Resource Stewardship Program

- Crissy Field projects design briefing
- updates on Army environmental remediation at the Presidio
- updates on Presidio transportation planning
- report on National Historic Landmark designation for the Golden Gate Bridge
- reports on work of the Golden Gate National Parks Association
- reports on programs and projects of GGNRA ''Park Partners''
- updates on issues concerning management and planning at Point Reyes NS

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4633.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 15, 1997.

**Brian O'Neill,**

*General Superintendent, Golden Gate National Recreation Area.*

[FR Doc. 97–33428 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Wildlife and Scenic River System: Ohio; Big and Little Darby Creeks

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Approval.

**SUMMARY:** The Secretary of the Interior hereby announces approval of an application by the Governor of Ohio to include additional segments of the Big and Little Darby Creeks, Ohio, as state administered components of the National Wild and Scenic Rivers System.

**FOR FURTHER INFORMATION CONTACT:** Angie Tornes, Rivers, Trails and Conservation Assistance Program, National Park Service, Midwest Regional Office, 310 West Wisconsin Street, Suite 100E, Milwaukee, Wisconsin 53202; or telephone 414–297–3605.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Pub. L. 90–542, as amended; 16 U.S.C. 1273, *et seq.*) and upon proper application of the Governor of the State of Ohio, an additional 3.4 miles of the Big and Little Darby Creeks are hereby designated and are added to the existing segments of the Big and Little Darby Creeks, a state-administered component of the National Wild and Scenic Rivers System.

On March 25, 1996, the Governor of Ohio petitioned the Secretary of the Interior to add an additional 3.4 miles to the 85.9 miles of the Big and Little Darby Creeks, designated as components of the National Wild and Scenic Rivers System March 10, 1996. The evaluation report for that designation, prepared by the National Park Service in September 1993, states that the additional segments now under consideration were eligible and would be suitable for national wild and scenic river designation once they were added to the State Scenic River System. The evaluation also concluded that these segments of the Big and Little Darby Creeks meet the criteria for scenic classification under the Act.

These additional segments were added to the Ohio Scenic River System October 3, 1994. Public comment regarding national designation of the additional segments was solicited in Ohio and the required 90-day review for Federal Agencies was provided. Public and Federal Agency comments support national designation of the additional Big and Little Darby Creek segments. The State of Ohio has fulfilled the requirements of the Act by including these additional segments in the Ohio Scenic River System. The State's program to permanently protect the river is adequate. Current State and local management of the river is proceeding according to the Big and Little Darby Creek Plan and Environmental Assessment submitted with the original application.

As a result, the Secretary has determined that the additional 3.4 miles of the Big and Little Darby Creeks should be added to the existing designation of Big and Little Darby Creeks as a state-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

Accordingly, the following additional river segments are classified as scenic pursuant to section 2(b) of the Act to be administered by State and local government:

*Big Darby Creek:* Scenic—From its confluence with Little Darby Creek (RM 34.1) upstream to the northern boundary of Battelle-Darby Creek Metro Park (RM 35.9) (1.8 miles).

*Big Darby Creek:* Scenic—From the U.S. Route 40 bridge (RM 38.9) upstream to the Conrail Railroad trestle crossing (RM 39.7) (0.8 miles).

*Little Darby Creek:* Scenic—From it confluence with Big Darby Creek (RM 0.0) to a point eight-tenths of a mile upstream (RM 0.8) (0.8 miles).

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. All comments received have been supportive.

Notice is hereby given that effective upon this date, the above-described additional river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the State of Ohio.

Dated: December 8, 1997.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 97–33427 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 97–11]**

### Ronald D. Springel, M.D., Grant of Restricted Registration

On January 28, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ronald D. Springel, M.D., (Respondent) of Spokane, Washington, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated February 24, 1997, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Seattle, Washington on July 15 and 16, 1997, before Administrative Law Judge Gail A.

Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed fundings of fact, conclusions of law and argument. On October 6, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent be granted a DEA Certificate of Registration subject to several restrictions that would remain in effect for three years from the effective date of the final order. On October 28, 1997, Respondent's counsel filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling, and on November 6, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1978, and is currently licensed to practice medicine in the State of Washington. In 1981 or 1982, while practicing in Pennsylvania, Respondent became addicted to drugs. Respondent obtained controlled substances for his own use, by having prescriptions filled that he had issued in names of other than his own. On August 17, 1983, Respondent entered a plea of nolo contendere in the Lehigh County Court, to three misdemeanor counts of possession of a controlled substance and three felony counts of prescribing a controlled substance outside the course of his medical practice in violation of the laws of the Commonwealth of Pennsylvania. Respondent was placed on probation without verdict and was ordered to surrender his DEA Certificate of Registration. Consequently, Respondent surrendered his previous DEA Certificate of Registration on August 26, 1983.

On July 25, 1984, Respondent was convicted in the United States District Court for the District of Alaska, following his plea of guilty to two felony counts of attempting to knowingly acquire possession of a controlled substance by fraud in violation of 21 U.S.C. 843 and 846, and three counts of acquiring possession of a controlled substance by fraud in violation of 21 U.S.C. 843. The court sentenced Respondent to two years imprisonment with all but 75 days suspended, and then placed Respondent on probation for five years.

On August 31, 1984, Respondent was convicted in the Superior Court for the State of Alaska of four felony counts related to the unlawful handling of controlled substances and one misdemeanor count of making an unsworn falsification of an application for a temporary permit to practice medicine in Alaska. Respondent was sentenced to five years probation. Thereafter, on September 5, 1984, Respondent's application for a medical license was denied by the Alaska State Medical Board.

In 1984, Respondent underwent approximately 42 days of inpatient treatment for chemical dependency. Respondent then moved to the State of Washington, and in 1987, he suffered a relapse of his drug addiction, using drugs including heroin. During his relapse, Respondent was employed at a narcotic treatment program, where he unlawfully acquired approximately 35 milliliters of methadone, a Schedule II controlled substance. As a result, on August 26, 1988, Respondent was convicted in the United States District Court for the Eastern District of Washington of one count of unlawful acquisition of a controlled substance in violation of 21 U.S.C. 843(a)(3), and was sentenced to one year imprisonment to be followed by two years of supervised release. In light of this conviction, on August 28, 1988, Respondent's probation based upon his conviction in the United States District Court for the District of Alaska was revoked and he was sentenced to three years imprisonment.

As a result of his relapse Respondent's license to practice medicine in the State of Washington was summarily suspended on March 4, 1988, by the Washington Board of Medical examiners (Washington Board). Thereafter, on August 1, 1988, the Washington Board revoked Respondent's Washington medical license and ordered that Respondent not petition for reinstatement of his license any earlier than 36 months from the effective date of the summary suspension order; that he successfully complete an inpatient treatment program; and that he remain drug and alcohol free for at least 12 months prior to his reinstatement. In addition, on September 27, 1988, Respondent's license to practice medicine in the Commonwealth of Pennsylvania was automatically suspended by the State Board of Medical Examiners due to his drug related convictions.

Respondent went to two different treatment facilities, entering the second facility on March 17, 1988. He has remained drug-free and in recovery since that date. Respondent testified at the hearing in this matter that he has developed a strong support system, and that he continues to regularly attend 12-step self-help group meetings. In addition, Respondent completed a five year contract with the Washington Physicians Health Program (WPHP) in 1994, which consisted of five elements: total abstinence from alcohol and any other addicting chemical; attendance at Alcoholics Anonymous and/or Narcotics Anonymous meetings; behavioral monitoring; chemical monitoring; and work site monitoring for the first five years under contract. After successfully completing his contract, Respondent has remained in the program on a voluntary basis, and was asked by the WPHP board to serve on the advisory committee, representing the rest of the participants in the program before the board.

In December of 1989, Respondent started a business which provided services to employers and employees to facilitate, among other things, compliance with drug-free workplace regulations. Over the years, this business endeavor has grown into six related enterprises which offer various services, to include employee assistance programs, occupational health services, drug-screen collection services, qualified medical review officers' services, and educational services to train employees and supervisors about the drug-free workplace regulatory requirements. The companies currently have approximately 2,000 clients in the Western United States, including the State of Washington.

On April 18, 1991, the Washington Board reinstated Respondent's license to practice medicine in the State of Washington with restrictions, including that he shall not obtain a DEA registration to handle controlled substances. On November 4, 1994, Respondent was granted an unrestricted license in the State of Washington, following the Washington Board's finding that Respondent ''is not a risk to the public in his practice as a physician. . . .''

At the hearing in this matter, numerous professional and/or personal associates and clients of Respondent either testified or submitted affidavits attesting to the high quality of services performed by Respondent and his companies; to Respondent's

distinguished reputation and character; and to their belief that the registration of Respondent to handle controlled substances poses no risk to the public or his patients. The Director of the WPHP testified that the chance of Respondent suffering another relapse is ''quite unlikely'' given that he had been drug-free and in recovery for over nine years at the time of the hearing.

Respondent testified that he is now seeking a DEA registration because he cannot fully perform the occupational health aspect of his businesses without being able to prescribe controlled substances. In addition, he wants to volunteer as the back-up physician at a local narcotic treatment program, and would need to be able to handle controlled substances to effectively perform his duties. Finally, he believes that being granted a DEA Certificate of Registration would make him a complete physician and would recognize the fact that he is a ''repaired'' physician.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, it is undisputed that Respondent's application for a license to practice medicine in Alaska was denied in 1984, and his medical license in Pennsylvania was suspended in 1988. It is also undisputed that while Respondent's license to practice medicine in the State of Washington was revoked in 1988, and then reinstated subject to restrictions in 1991, Respondent has possessed an unrestricted medical license in that state since 1994.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are relevant in this proceeding. Respondent became addicted to drugs in the early 1980's. Respondent repeatedly violated both state and Federal laws by fraudulently obtaining controlled substances for his own use. In the early 1980's, he prescribed controlled substances using his previous DEA registration to acquire the drugs. While Respondent did receive extensive treatment in 1984 for his admitted chemical dependency, he suffered a relapse in 1987, abusing various drugs including heroin. In late 1987, Respondent unlawfully acquired methadone from a narcotic treatment program where he was working. Therefore, as Judge Randall concluded, ''the Government has proven by a preponderance of the evidence that in the 1980's, the Respondent unlawfully acquired, prescribed, and possessed controlled substances, as well as unlawfully consumed them.'' The Acting Deputy Administrator notes that there is no evidence in the record that Respondent ever unlawfully prescribed and/or dispensed controlled substances for anyone other than himself.

As to factor three, it is undisputed that Respondent has been convicted on several occasions of controlled substances related offenses. In August 1983, he pled nolo contendere in the Commonwealth of Pennsylvania to three misdemeanor counts of illegal possession of a controlled substance, and to three felony counts of prescribing controlled substances outside the course of medical practice. In July 1984, Respondent was convicted in the United States Court for the District of Alaska of five felony counts of obtaining a controlled substance by fraud, and in August 1984, Respondent was convicted in an Alaska state court of four felony counts relating to the unlawful handling of controlled substances and one misdemeanor count relating to the falsification of an application for a license to practice medicine in Alaska. Further, in August 1988, Respondent was convicted in the United States District Court for the Eastern District of Washington of one count of the unlawful acquisition of a controlled substance. As a result of these convictions, Respondent was incarcerated for a period of time.

Finally, regarding factor five, Respondent has admitted to a long history of substance abuse in the 1980's. He abused his privilege as a DEA registrant to obtain the drugs, he stole methadone from his employer, and he abused heroin. Clearly, this conduct posed a threat to the public safety.

The Acting Deputy Administrator concludes that based upon the foregoing, the Government has established a prima facie case for the denial of Respondent's application for a DEA Certificate of Registration. However, all of Respondent's unlawful conduct and his convictions stemmed from his drug addiction. Respondent testified that he has been drug-free since March 1988, and there is no evidence in the record of the contrary. In fact, the evidence presented by Respondent shows a strong commitment to continued recovery. Respondent continues to voluntarily participate in the WPHP, and the Director of the program testified that after over nine years of being drug-free, it is unlikely that Respondent will suffer a relapse of his drug abuse. Like Judge Randall, the Acting Deputy Administrator also finds it noteworthy that Respondent's business enterprises are centered around the detection and preventing of drug abuse in the workplace. Finally, the Acting Deputy Administrator finds significant the witness testimony and affidavits, offered on behalf of Respondent, attesting to his personal and professional integrity, and to his continued commitment to sobriety.

The Administrative Law Judge recommended granting Respondent's application for a DEA Certificate of Registration, but also found persuasive the Government's argument that ''these multiple offenses are significant [enough] to warrant an extremely close look at any future registration for Respondent.'' Therefore, Judge Randall recommended that the following conditions and restrictions be placed upon Respondent's registration:

''1. That the Respondent maintain a log of all controlled substance prescriptions he issues. At a minimum, the log should indicate the date that the prescription was written, the name of the patient for whom it was written, and the name and dosage of the controlled substance(s) prescribed. The Respondent should maintain this log for a period of three years from the effective date of the final order. Upon request by the Special Agent in Charge of the DEA Field office in Seattle, or his designee, the Respondent shall submit or otherwise make reasonably available his prescription log for inspection.

2. For three years after the effective date of the final order, the Respondent should continue his association with the WPHP, and, if for any reason the WPHP

no longer requires random urine screens, the Respondent shall continue these monthly screens at his own expense. The Respondent shall provide copies of the reports of the results of the screens upon reasonable request by DEA personnel.

3. For three years after the effective date of the final order, regardless of the applicable Washington state law, the Respondent may not prescribe or dispense controlled substances to himself or to any members of his family. The only exception to this limitation is that the Respondent may possess and consume controlled substances which are medically necessary for his own use, and which he has obtained lawfully from another duly authorized physician.''

The Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent should be issued a DEA Certificate of Registration, but that some restrictions on his registration are warranted in light of his past substance abuse, and his use of his previous DEA registration to fraudulently obtain controlled substances.

In his exceptions to Judge Randall's recommended ruling, Respondent contends that the proposed language of the second condition to be imposed on Respondent's registration, if granted, is ambiguous, since it requires that Respondent ''continue these monthly screens'' and he is not currently undergoing ''monthly'' urine screens. Respondent argues that he is currently participating in Phase III of the WPHP, which provides for random toxicology testing, but does not provide for monthly testing. Consequently, Respondent purposes that the restriction be rewritten to require that he continue his participation in Phase III of the WPHP, which includes random urine screens, for three years after the effective date of the final order. The Acting Deputy Administrator agrees with Respondent since the record does not indicate that Respondent is currently required to undergo monthly urine screens.

Therefore, the Acting Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration subject to the conditions as recommended by Judge Randall with slight modifications. Respondent's registration shall be subject to the following conditions for three years from the date of issuance of the registration:

(1) Respondent shall maintain a log of all controlled substances that he prescribes. At a minimum, the log shall include the name of the patient, the date that the controlled substance was prescribed, and the name, dosage and quantity of the controlled substance prescribed. Upon request by the Special Agent in Charge of the Seattle DEA office, or his designee, Respondent shall submit or otherwise make available this prescription log for inspection.

(2) Respondent shall continue his participation in Phase III of the Washington Physicians Health Program, including such random urine screens, meetings, and other requirements as mandated by the program. Respondent shall immediately notify the Special Agent in Charge of the Seattle DEA office, or his designee, of any urine screens found to be positive for the presence of controlled substances.

(3) Respondent shall not prescribe or dispense any controlled substances to himself or to any members of his family, and shall only administer to himself those controlled substances legitimately dispensed or prescribed to him by another duly authorized practitioner.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Ronald D. Springel, M.D., be, and it hereby is granted, subject to the above described restrictions. This order is effective January 22, 1998.

Dated: December 15, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

[FR Doc. 97–33363 Filed 12–22–97; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''International Price Program—U.S. Import Price Indexes.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before February 23, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7268 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a major economic indicator since 1982.

The indexes are widely used in both the public and private sectors. The primary public sector use is deflation of the U.S. Trade statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy

and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The International Price Program indexes are viewed as a sensitive indicator of the economic environment. The Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policy-makers in the Department of the Treasury, the Council of Economic Advisors, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy, and evaluation of the general business environment.

*Current Actions*

The IPP continues to modernize data collection and processing to permit more timely release of its indexes and to reduce reporter burden. The IPP is using the telephone rather than personal visits for new item initiation in limited situations. We believe that initiation by telephone reduces reporting burden with no loss in response. Other potential initiation techniques to reduce burden being reviewed include less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples. To reduce the time required for processing new items, direct entry of initiation data from the field will be tested. Also, for repricing, the use of fax telephone lines to permit direct collection and entry into our database is being considered. In addition, use of the Internet for monthly repricing is being reviewed, contingent upon the resolution of questions relating to the security of the data.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* International Price Program/U.S. Import Product Information.

*OMB Number:* 1220–0026.

*Affected Public:* Business or other for-profit.

| Form | Total respondents | Frequency | Total annual responses | Average time per response (hours) | Estimated total burden (hours) |
|---|---|---|---|---|---|
| Form 2894B | 1725 | Annually | 1725 | 1 | 1725 |
| Form 3008 | 1725 | Annually | 1725 | .334 | 576.15 |
| Form 3007D | 3235 | Monthly, quarterly | 38540 | .56 | 21582.4 |
| Total | 4960 | | 41,990 | | 23884 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 18th day of December, 1997.

**W. Stuart Rust, Jr.**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 97–33445 Filed 12–22–97; 8:45 am]

**BILLING CODE 4510–24–M**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Washington State Standards; Notice of Approval

### 1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standard changes, the State has submitted by letter dated November 6, 1986, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, a State standard at WAC 296–56 comparable to the Federal Marine Terminal standard 29 CFR 1917, as published in the **Federal Register** (48 FR 30886) on July 5, 1983. The State's submission was adopted on December 11, 1984, effective January 10, 1985, under Washington Administrative Order 84–24. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 23, 1992, the State resubmitted its Marine Terminal standard, consolidating all action taken on the standard to date and including the changes necessary to correct the discrepancies previously identified. The State's consolidated standard was adopted on October 30, 1992, effective December 8, 1992, under Washington Administrative Order 92–06. Significant differences are: The scope of the standard is expanded to include all waterfront operations; the definition of confined spaces is broader; the railroad facilities standard, WAC 296–56–60019, only applies to standard gauge railroad operations since there are no other gauge railroads in the State and the State referenced its multipiece and single piece rim standards which are as effective as OSHA's. The State also included the following standards and additions not contained in the federal standard: requirements for an accident prevention program; additional slinging requirements; additional line handling requirements; additional railroad operation requirements; additional log

handling requirements; inclusion of explosive requirements; specific first aid and first aid kit requirements; additional machinery operator requirements; additional auxiliary gear requirements; additional cargo handling gear tables; cargo board and other type pallet board requirements; additional industrial truck requirements; safety latches for hooks requirements; crane control requirements; additional crane requirements; additional requirements for communication for the crane operator; additional chute and conveyor requirements; additional material handling equipment certification requirements; additional requirements while working near water; additional terminal facility maintenance requirements; fall protection requirements; requirements for docks and dock facilities; requirements for access to vessels; requirements for electric and hand powered manlifts; Jacob's ladder requirements; additional employee exit requirements; additional illumination requirements; requirements for petroleum docks, boat marinas and canneries and cold storage docks and standard signals for longshore crane signals.

In response to Federal standard changes, the State has submitted by letter dated February 17, 1995, from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, a State standard comparable to the Federal standard, 1915.7, 1915.11, 1915.12, 1915.13, 1915.14, 1915.15, 1915.16 and Appendix A & B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, published in the **Federal Register** (59 FR 37815) on July 25, 1994. The State standard was adopted on January 18, 1995, effective March 10, 1995, under Administrative Order 94–22. In a letter dated November 17, 1995, from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, the state submitted an amendment identical to 1915.12, 1915.14 and 1915.15 corrections to the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, published in the **Federal Register** (60 FR 14218) on March 16, 1995. In the same letter, the State transmitted a State initiated change to its standard WAC 296–304–010, which is the scope and application section of the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, to make it identical to the federal standard. The State standard amendments were adopted on October 20, 1995, effective January 16, 1996, under Administrative Order 94–19.

On its own initiative, the State of Washington has submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to WAC 296–32, Telecommunications. The changes consist of correcting a reference to a section or parts, alternatives to sign wording, elimination of male gender terms, repealing the term ''Division of Industrial Safety and Health'', and renumbering or lettering of paragraphs to comply with the state code reviser's requirements. The State's submission was adopted on July 20, 1994, with an effective date of September 20, 1994, under Washington Administrative Order 94–07. The original State standard received approval on May 4, 1976 (41 FR 18484).

On its own initiative, the State of Washington has submitted by letter dated November 17, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a state standard change to WAC 296–24–13501(2), Color Identification, to be identical to 29 CFR 1910.144(a)(3). The State's submission was adopted on October 20, 1995, with an effective date of January 16, 1996, under Washington Administrative Order 94–16. The original state standard received approval on January 30, 1976 (41 FR 4689) and the revocation of 29 CFR 1910.144(b), received approval on May 21, 1991 (56 FR 23305).

On its own initiative, the State of Washington has submitted by letter dated October 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, an addition of state standard WAC 296–24–19514, Reporting of Injuries to Employees Operating Machanical Power Presses, to be identical to 29 CFR 1910.217(g). This state standard was inadvertently repealed by Administrative Order 88–11 on July 6, 1988. The State's submission was adopted on August 9, 1995, effective September 25, 1995, under Washington Administrative Order 95–04. The original state standard received approval on May 4, 1976 (41 FR 18484).

On its own initiative, the State of Washington has submitted by letter dated February 12, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, an addition of State standard WAC 296.24–76555, Alternating Tread-type Stairs. This amendment incorporated guidelines from WISHA Regional Directive 85–3 for the evaluation and inspection of alternating tread-type fixed industrial stairs, and was adopted in response to OSHA Instruction STD 1–1.11. (The Federal standard does not include alternating tread-type stairs.) The State's submission was adopted January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18. In a letter dated September 8, 1992, from Joseph A. Dear, Director to James W. Lake, Regional Administrator, minor changes to the standard were made. The State's submission was adopted on August 10, 1992, effective September 10, 1992, under Washington Administrative Order 92–06.

The administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. The changes were incorporated as part of the State plan.

**2. Decision**

OSHA has determined that the State standards for Marine Terminals, Confined Spaces for Shipyards, and Alternating Tread-type Stairs are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The State's Marine Terminals standard, as amended, has been in effect since January 10, 1985 and December 8, 1992; the Confined Spaces for Shipyards standard has been in effect since March 10, 1995; and the Alternating Tread-type Stair standard has been in effect since February 12, 1991. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

OSHA has also determined that the differences between the State and Federal amendments for Telecommunications are minimal and thus are substantially identical. OSHA therefore approves this amendment; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. OSHA has further determined that the State's amendments for Confined Spaces in Shipyards, Mechanical Power Presses, and Color

Identification are identical to the comparable Federal amendments, and therefore approves the amendments.

**3. Location of Supplement for Inspection and Copying**

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, WISHA Services Division, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210. For electronic copies of this **Federal Register** notice, contact OSHA's WebPage at http://www.osha.gov/.

**4. Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason: The standards and amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective December 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667])

Signed at Seattle, Washington, this 27th day of October 1997.

**Richard S. Terrill,**

*Acting Regional Administrator.*

[FR Doc. 97–33388 Filed 12–22–97; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Electronic Records Work Group; Availability of Materials for Review and Comment; Request for Comment

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of materials for public review and comment; request for comment.

**SUMMARY:** This notice provides information on where the public may obtain copies of materials prepared for and by the Electronic Records Work Group and summaries of the Work Group meetings. It also describes how to provide comments to the Work Group, and solicits comments on issues that the Work Group should address. The Electronic Records Work Group is charged with identifying workable alternatives to the disposition practices currently authorized under NARA's General Records Schedule 20 for Electronic Records.

All materials prepared for the Electronic Records Work Group and related information on their activities will be posted on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>. Individuals who do not have Internet access may call the person indicated in the **FOR FURTHER INFORMATION CONTACT** section to request paper copies of these materials.

**DATES:** Comments on the preliminary list of issues must be received by January 9, 1998.

**ADDRESSES:** Comments should be sent electronically to the e-mail address <grs20@arch2.nara.gov>. If you do not have access to e-mail, comments may be mailed to Electronic Records Work Group (NWR), Room 2100, 8601 Adelphi Rd., College Park, MD 20740–6001, or faxed to 301–713–6850.

**FOR FURTHER INFORMATION CONTACT:** To request paper copies of materials posted on the GRS 20 Internet Web page, contact Jean Cooke at 301–713–7110, extension 228.

**SUPPLEMENTARY INFORMATION:** The initial meeting of the Electronic Records Work Group was held on December 19, 1997. At that meeting, the Work Group received a list of issues to be discussed by the Work Group and a list of resources on which the Group should draw in dealing with records disposition issues. Members of the Work Group, consultants to the project, and interested members of the public are asked to recommend additions to, or other changes in the issues to be discussed and the list of resources by January 9, 1998. Following is the list of issues:

**Preliminary List of Issues To Be Addressed by the Electronic Records Work Group**

The Electronic Records Work Group is charged with developing a practical, implementable approach to replacing the disposition authorities currently provided by GRS 20. This issues list is a ''first cut'' at identifying those issues which need to be addressed as part of the project. The list is meant to stimulate discussion and lead to the identification of other issues. Comments on the list and suggestions for additions should be sent to the NARA through its web page at <www.nara.gov/records/grs20> or by fax to Michael Miller at 301–713–6850.

*Scope of the GRS*

1. The GRS, including GRS–20, should cover only administrative records. How should administrative records be defined and how should the programmatic records excluded from GRS-20 be scheduled?

2. How should the GRS fit into the overall spectrum of disposition guidance and authorization? What other approaches are there for developing disposition authorities for records common to several agencies?

3. Is there a role for a specific GRS covering records used to operate and manage central computer facilities and local area networks? If so what should that GRS include?

4. Is there a rationale for not applying the GRS to electronic records of some agencies?

*Implementation Issues*

5. What implementation options are available to agencies now and for the next 5–7 years and into the future?

6. If records in an application system such as email or word processing are not arranged according to the agency filing system, how does one go about implementing a disposition schedule?

7. Is it possible to schedule the disposition of individual records (documents) in word processing and e-mail applications? If not, what are the alternatives?

8. What approaches are there for replacing the disposition ''delete (or destroy) when no longer needed?''

9. Do agency staff have a difficult time understanding and applying GRS 20? If so, what lessons should be applied to developing the replacement?

Dated: December 19, 1997.

**Lewis J. Bellardo,**

*Deputy Archivist of the United States.*

[FR Doc. 97–33651 Filed 12–22–97; 8:45 am]

BILLING CODE 7515–01–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.

6. *An estimate of the number of responses:* 522.

7. *The estimated number of annual respondents:* 20.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 257 hours (197 hours reporting and 60 hours recordkeeping) or 3.8 hours/response.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by January 22, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of December 1997.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 97–33421 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Steam Generator Tube Inspection Techniques; Issue

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 97–05 to all holders of operating licenses for pressurized-water reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to emphasize the importance of performing steam generator tube inservice inspections using qualified techniques in accordance with the requirements of Appendix B to 10 CFR Part 50, and to require certain information from addressees to determine whether they are in compliance with the current licensing basis for their respective facilities given their steam generator tube inservice inspection practices. This generic letter only requests information from the addressees under the provisions of Section 182a of the Atomic Energy Act, as amended, and 10 CFR 50.54(f).

The generic letter is available in the NRC Public Document Room under accession number 9712120014.

**DATES:** The generic letter was issued on December 17, 1997.

**ADDRESSES:** Not applicable.

**FOR FURTHER INFORMATION CONTACT:** Phillip J. Rush, at (301) 415–2790.

**SUPPLEMENTARY INFORMATION:** This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications of or additions to structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 17th day of December 1997.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–33423 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of December 22, 29, 1997, January 5, and 12, 1998.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of December 22*

There are no meetings the week of December 22.

*Week of December 29—Tentative*

There are no meetings the week of December 29.

*Week of January 5—Tentative*

There are no meetings the week of January 5.

*Week of January 12—Tentative*

Wednesday, January 14

9:30 a.m. Briefing by Executive Branch (closed—Ex.1)

Thursday, January 15

9:00 a.m. Affirmation Session (public meeting) (if needed)

**Note:** The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 18, 1997.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 97–33550 Filed 12–19–97; 11:55 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Fixed Gauge Licenses; Availability of Draft NUREG

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Volume 4, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauge Licenses,'' dated October 1997.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the fourth program-specific guidance developed to support an improved materials licensing process.

It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Draft Regulatory Guide and Value/Impact Statement, FC 404–4, ''Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources in Nonportable Gauging Devices,'' dated January 1985, and the guidance for licensing staff previously found in Policy and Guidance Directive, FC 85–4, ''Standard Review Plan for Applications for the Use of Sealed Sources in Nonportable Gauging Devices,'' dated February 6, 1985, and Policy and Guidance Directive, FC 85–8, Revision 1, ''Licensing of Fixed Gauges and Similar Devices,'' dated June 29, 1988. In addition, this draft report also contains pertinent information found in Technical Assistance Requests and Information Notices.

This draft report takes a risk-informed, performance-based approach to licensing fixed gauges, i.e., it reduces the amount of information needed from an applicant seeking to possess and use a relatively safe device. These fixed gauges contain sealed sources of radioactive material and incorporate features engineered to enhance their safety. NRC's considerable experience with these licensees indicates that radiation exposures to workers are generally low, if the gauges are operated as designed and workers follow basic safety procedures.

This draft report is strictly for public comment and is NOT for use in preparing or reviewing applications for fixed gauges until it is published in final form. It is being distributed for comment to encourage public participation in its development.

**DATES:** The comment period ends March 23, 1998. Comments received after that time will be considered if practicable.

**ADDRESSES:** Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 4, by writing to the U.S. Nuclear Regulatory Commission, *Attn:* Sally L. Merchant, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to SLM2@NRC.GOV. A copy of draft NUREG–1556, Volume 4, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

**FOR FURTHER INFORMATION CONTACT:** Sally Merchant, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December, 1997.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–33422 Filed 12–22–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Self-Shielded Irradiator Licenses; Availability of Draft NUREG

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Volume 5, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses,'' dated October 1997.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the fifth program-specific guidance developed to support an improved materials licensing process.

It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Regulatory Guide 10.9, ''Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators,'' dated December 1988, and the guidance for licensing staff previously found in Policy and Guidance Directive, FC 84–16, Revision 1, ''Standard Review Plan for Applications for Use of Self-Contained Dry Source-Storage Gamma Irradiators,'' dated January 26, 1989. In addition, this draft report also contains information found in pertinent Technical Assistance Requests and Information Notices.

This draft report takes a risk-informed, performance-based approach to licensing self-shielded irradiators, i.e., it reduces the amount of

information needed from an applicant seeking to possess and use a relatively safe device. These self-shielded irradiators contain sealed sources of radioactive material and incorporate features engineered to enhance their safety. NRC's considerable experience with these licensees indicates that radiation exposures to workers are generally low, if the irradiators operate as designed and workers follow basic safety procedures.

This draft report is strictly for public comment and is NOT for use in preparing or reviewing applications for self-shielded irradiators until it is published in final form. It is being distributed for comment to encourage public participation in its development.

**DATES:** The comment period ends March 23, 1998. Comments received after that time will be considered if practicable.

**ADDRESSES:** Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 5, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Patricia C. Vacca, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to PCV@NRC.GOV. A copy of draft NUREG–1556, Volume 5, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001

**FOR FURTHER INFORMATION CONTACT:** Mrs. Patricia C. Vacca, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7908; electronic mail address: PCV@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December 1997.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–33420 Filed 12–22–97; 8:45 am]

**BILLING CODE 7590–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39453; File No. SR–CBOE–97–63]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Options on the Dow Jones High Yield Select 10 Index

December 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 8, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 24.1, 24.6, and 24.9 to provide for the listing and trading of options on the Dow Jones High Yield Select (10 Index (''Index''), a narrow-based index comprised of the ten highest yielding stocks from the Dow Jones Industrial Average (''DJIA''). Options on the Index will be cash-settled and will have European-style exercise provisions.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange seeks to list and trade cash-settled, European-style stock index options on the Index. The Index is an equal-dollar weighted index comprised of the ten highest yielding stocks from the DJIA.[2] The Index was designed to replicate a popular contrarian strategy which assumes that the ten highest-yielding stocks in the DJIA are oversold and, therefore, underpriced relative to the other DJIA stocks. Because a number of mutual funds and unit investment trusts employ this strategy, the Exchange believes that options based on the same general strategy would provide a valuable hedging and investment tool.

According to the Exchange, the Index satisfies the generic criteria for listing options on narrow-based indexes set forth in Exchange Rule 24.2, ''Designation of the Index,'' as well as the generic criteria appearing in the Commission's order that approved Exchange Rule 24.2 (''Generic Index Approval Order'').[3] Because the Exchange submitted this proposed rule change in accordance with the expedited approval procedures set forth in Exchange Rule 24.2 and the Generic Index Approval Order, the Exchange may list and trade options on the Index as soon as 30 days from December 8, 1997, the filing date of the proposed rule change.

(a) *Index Design.* The Index will be constituted at the end of the calendar year, and will be comprised of the ten highest-yielding stocks from the DJIA, determined as of the close of trading on

[2] The DJIA is comprised of 30 of the largest companies traded on the New York Stock Exchange. The DJIA currently consists of the following companies: Allied Signal, Incorporated; Aluminum Company of America; American Express Company; AT&T Corporation; Boeing Company; Caterpillar, Incorporated; Chevron Corporation; Coca Cola Company; Du Pont E.I. de Nemours; Eastman Kodak Company, Exxon Corporation; General Electric Company; General Motors Corporation; Goodyear Tire and Rubber Company; Hewlett Packard Company; International Business Machines; International Paper Company; Johnson and Johnson; JP Morgan and Company, Incorporated; McDonalds Corporation; Merck and Company, Incorporated; Minnesota Mining and Manufacturing; Philip Morris Companies, Incorporated; Procter and Gamble Company; Sears Roebuck and Company; Traveler's Group Incorporated; Union Carbide Corporation; United Technologies Corporation; Wal Mart Stores, Incorporated; and Walt Disney Company. Earlier this year, the Commission approved the Exchange's proposed rule change to list and trade options on the DJIA. *See* Securities Exchange Act Release No. 39011 (Sept. 3, 1997), 62 FR 47840 (Sept. 11, 1997).

[3] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

the third business day prior to the last business day of the calendar year. The Exchange provided information in its proposed rule change filing that identified the ten DJIA stocks that would make up the Index if it were constituted as of November 20, 1997 (''Sample Index'').[4] All of the stocks in the Sample Index are ''reported securities'' as defined in Rule 11Aa3–1 under the Act.[5] In addition, all of the stocks in the Sample Index meet the Exchange's listing criteria for equity options as set forth in Exchange Rule 5.3. Accordingly, 100% of the stocks in the Sample Index, by number and weight, are eligible to serve as underlying securities pursuant to Exchange rules.

In its proposed rule change filing, the Exchange also provided statistical information indicating that each of the stocks in the Sample Index has a market capitalization well in excess of $75 million. As of November 20, 1997, the stocks comprising the Sample Index ranged in market capitalization from $9.55 billion (Goodyear Tire and Rubber Company) to $154.58 billion (Exxon Corporation). The total market capitalization of the Sample Index as of that date was $598.77 billion. The mean market capitalization was $59.88 billion, and the median market capitalization was $49.43 billion.

Additional information provided by the Exchange demonstrates that each of the component stocks in the Sample Index has experienced monthly trading volume well in excess of 1 million shares over the six month period through October, 1997. During that period, monthly trading volumes for the Sample Index stocks ranged from a low of 6.1 million shares (Goodyear Tire and Rubber Company—August, 1997), to a high of 174 million shares (Philip Morris—June, 1997). Because the Index will be equal-dollar weighted at the outset, each component stock will comprise 10% of the Index. As described below, the Index will be rebalanced once each calendar quarter at which time each stock will be adjusted so that each component will once again have equal dollar weight within the Index.

(b) *Calculation of the Index.* The Index will be calculated by the Exchange or its designee on a real-time basis using last-sale price information, and will be disseminated by the Exchange every 15 seconds. If a component stock is not being traded currently, the Exchange will use the most recent price at which the stock traded to calculate the Index. The initial value of the Index will be set to equal the value of the DJX as of December 31, 1997.[6]

The Index is equal-dollar weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 1, 1998, when the Index will be set to equal the value of the DJX. Initially, each of the component stocks is represented in equal dollar amounts; the level of the Index is equal to the combined market value of the assigned number of shares for each of the Index components, divided by the current Index divisor. The Index divisor is adjusted to reflect non-market related changes in the prices of the component securities and changes in the composition of the Index. Changes which result in divisor adjustments include, but are not limited to, quarterly rebalancings, special dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

(c) *Maintenance of the Index.* The Exchange will maintain the Index. Exchange staff will rebalance the Index quarterly on expiration Fridays in March, June, September, and on the last business day in December. If it becomes necessary to remove a stock from the Index (for example, because of a takeover, merger, or component change in the DJIA), it will be replaced by the stock from the DJIA which has the highest yield of those stocks not already included in the Index. As of the third business day before the last business day of the calendar year, the Exchange will determine the ten highest yielding stocks from the DJIA. The Exchange will disseminate notice of these ten stocks on that day. The reconstituted Index, as determined three business days before the last business day of the calendar year, will become effective as of January 1 of the next calendar year. The following table prepared by the Exchange shows the stocks eligible for inclusion in the Index from 1987 through 1996. The table illustrates that turnover from one year to the next generally involves two or three stocks.[7]

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1987 | GM | UK | CHV | WX | XON | S | T | ALD | GT | DD |
| 1988 | GM | UK | CHV | WX | XON | S | T | ALD | *UTX* | *BA* |
| 1989 | GM | UK | CHV | *EK* | XON | S | T | ALD | UTX | *DD* |
| 1990 | GM | UK | CHV | EK | XON | S | *MMM* | ALD | *GT* | DD |
| 1991 | GM | UK | *AXP* | EK | XON | S | *T* | ALD | GT | DD |
| 1992 | GM | UK | AXP | EK | XON | S | *WX* | CHV | *TX* | *IBM* |
| 1993 | GM | *UTX* | AXP | EK | XON | S | WX | CHV | TX | IBM |
| 1994 | *JPM* | *UK* | AXP | EK | XON | *MO* | Z | CHV | TX | *DD* |
| 1995 | JPM | *S* | *MMM* | EK | XON | MO | Z | CHV | TX | DD |
| 1996 | JPM | *GM* | MMM | EK | XON | MO | *IP* | CHV | TX | DD |

If the Index fails at any time to satisfy one or more of the required maintenance criteria, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless the Exchange determines that such failure is insignificant and the Commission concurs in that determination, or unless the Commission approves the continued listing of options on the Index under Section 19(b)(2) of the Act.[8]

(d) *Trading of Option Contracts Based on the Index.* The Exchange proposes to base trading in Index options on the full value of the Index. The Exchange may

[4] The ten stocks are: AT&T Corporation, Chevron Corporation, Du Pont E.I. de Nemours, Exxon Corporation, General Motors Corporation, Goodyear Tire and Rubber Company, International Paper Company, JP Morgan and Company, Minnesota Mining and Manufacturing, and Philip Morris Companies.

[5] 17 CFR 240.11Aa3–1.

[6] The DJX is the index upon which options on the DJIA are based. The value of the DJX is equal to the level of the DJIA divided by 100. As of November 20, 1997, the value of the DJX was 78.27.

[7] In the table above, the symbols represent the following DJIA stocks: GM—General Motors; UK—Union Carbide, CHV—Chevron; EK—Eastman Kodak; XON—Exxon Corporation; S—Sears Roebuck & Company; T—AT&T Corporation; ALD—Allied Signal Inc.; GT—Goodyear Tire and Rubber Company; DD—EI du Pont de Nemours and Company; WX—Westinghouse Electric Corporation; AXP—American Express; TX—Texaco Inc.; IBM—International Business Machines; JPM—JP Morgan; Z—Woolworth Corporation; MO—Philip Morris Companies, Inc.; UTX—United Technologies Corporation; BA—Boeing Company; MMM—Minnesota Mining and Manufacturing; and IP—International Paper Company. An italicized ticker symbol represents a new component stock.

[8] 15 U.S.C. § 78s(b)(2).

elect to list full-value, long-term index option series (''LEAPS®''), as provided in Exchange Rule 24.9, ''Terms of Index Option Contracts.'' The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing Index value for any such reduced-value LEAP will be rounded to the nearest one-hundredth.

(e) *Exercise and Settlement of Option Contracts Based on the Index.* Options listed and traded on the Index will have European-style exercise features and will be ''A.M.-Settled Index Options'' within the meaning of the Exchange Rules in Chapter XXIV, ''Index Options,'' including Exchange Rule 24.9, which is being amended to reference options based on the Index. Option contracts based on the Index will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day preceding the expiration date, typically a Thursday.

(f) *Exchange Rules Applicable to the Trading of Index Option Contracts.* Except as modified in this proposed rule change, the Exchange Rules in Chapter XXIV will apply to options listed and traded on the Index. In addition, option contracts based on the Index will be subject to the position limit requirements of Exchange Rule 24.4A, ''Position Limits for Industry Index Options.''

The Exchange has represented that it possesses the necessary systems capacity to support new series that would result from the introduction of option contracts based on the Index. In addition, the Options Price Reporting Authority (''OPR'') informed the Exchange that additional traffic generated by options on the Index is within OPRA's capacity.[9]

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it will permit trading in option contracts based on the Index in accordance with rules designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

[9] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to William Speth, Exchange, dated November 20, 1997.

[10] 15 U.S.C. § 78f.

[11] 15 U.S.C. § 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change complies with the requirements set forth in the Generic Index Approval Order,[12] it constitutes a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (e) of Rule 19b-4 thereunder.[14] Pursuant to the Generic Index Approval Order, the Exchange may not list Index options for trading prior to 30 days after December 8, 1997, the date the proposed rule change was filed with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–63 and should be submitted by January 13, 1998.

[12] *See* note 3, *supra.*

[13] 15 U.S.C. § 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(e).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–33404 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39450; File No. SR–CHX–97–31]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to a Rebate to Members of Dues and Certain Fees

December 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to rebate to members (1) an amount equal to six months of membership dues and (2) an amount equal to twelve months of floor telephone booth and/or post space charges applicable to them, as set forth in the Exchange's Membership Dues and Fees Schedule.

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from J. Craig Long, Attorney, Foley & Lardner, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 10, 1997 (''Amendment No. 1''). The Exchange initially submitted the proposal on December 8, 1997. However, at the Commission's request, the Exchange filed Amendment No. 1 to the proposed rule change on December 11, 1997 to provide the reasoning for rebating the dues and fees.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to rebate to members an amount equal to six months of membership dues and an amount equal to twelve months of floor telephone booth and/or post space charges applicable to them because the Exchange has already adequately covered its costs for the year.

The Exchange's Finance Committee has determined that the proposed rebates would be consistent with the general guidelines adopted by the Committee with respect to the appropriate level of capital and retained earnings that the Exchange should possess at any given time. Furthermore, the Committee has focused on the Exchange's capitalization and determined that even after the proposed rebate, the Exchange will have ample capital and resources to continue to fulfill its proscribed duties in its capacity as a self-regulator and as a registered national securities exchange.[3]

*2. Statutory Basis*

The Exchange represents that proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Soliciation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange, Inc. All submissions should refer to File No. SR–CHX–97–31 and should be submitted by January 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 97–33403 Filed 12–22–97; 8:45 am]

**BILLING CODE 8010–01–M**

[3] See Amendment No. 1.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39451; File No. SR–NASD–97–88]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Incorporated Relating to Process Fees on Members That Are Parties to Arbitration Proceedings

December 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the National Association of Securities Dealers, Incorporated ''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to amend Rule 10333 of the NASD's Code of Arbitration Procedure (''Code'') to add a process fee on members that are parties to arbitration proceedings. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10333. Member Surcharge *and Process Fees*

(a) Each member [who is named as] *that is* a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-claim or Third-Party Claim, shall be assessed a non-refundable surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be [subject to reimbursement] *chargeable to any other party* under Rules 10332(c) and 10205(c) of the Code.

| Amount in Dispute | Surcharge |
|---|---|
| $.01–$2,500 | $150 |
| $2,500.01–$5,000 | 200 |
| $5,000.01–$10,000 | 300 |
| $10,000.01–$25,000 | 400 |
| $25,000.01–$30,000 | 600 |
| $30,000.01–$50,000 | 800 |
| $50,000.01–$100,000 | 1,000 |
| $100,000.01–$500,000 | 1,500 |
| $500,000.01–$1,000,000 | 2,000 |
| $1,000,000.01–$5,000,000 | 2,500 |
| $5,000,000.01–$10,000,000 | 3,000 |
| Over $10,000,000 | 3,600 |

(b) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Rule 10314 of the Code.

(c) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the nonrefundable surcharge shall be $1,200 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.

*(d) Each member that is a party to an arbitration proceeding will pay a nonrefundable process fee as set forth in the schedule below for each stage of a proceeding. The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees. The prehearing process fee will accrue according to the schedule set forth below, but will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing session. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.*

*Prehearing Process Fee Schedule (proceedings where more than $25,000 is in dispute)*

| | |
|---|---|
| *Service of Claim (accrues when the claim has been submitted and is ready to be served on the respondents)* | *$50* |
| *Case Preparation (accrues when the first answer to the claim is received or due and discovery and motions proceedings commence* | *150* |
| *Prehearing Activities (accrues when the parties are first notified of the names of any of the arbitrators selected to hear the matter or are given the names of arbitrators to select)* | *400* |
| *Total* | *$600* |

*Hearing Process Fee Schedule (accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)*

| Damages requested | Hearing process fee |
|---|---|
| $1–$30,000 | $0 |
| $30,000.01–$50,000 | 1,000 |
| $50,000.01–$100,000 | 1,500 |
| $100,000.01–$500,000 | 2,500 |
| $500,000.01–$1,000,000 | 3,500 |
| $1,000,000.01–$5,000,000 | 4,500 |
| More than $5,000,000 | 5,000 |
| Unspecified | 2,000 |

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASD Regulation is proposing to amend Rule 10333 of the Code to add a process fee to be charged to members at several stages of arbitration proceedings. The proposed rule change is the last stage of a three stage effort to make the NASD's dispute resolution program self-funding by charging fees to participants in arbitration proceedings.[1]

The previously approved surcharge and the other pending fee increases will add approximately $12 million to the revenue stream of the Office of Dispute Resolution (''Office''). In addition, they will shift much of the direct cost of operating the dispute resolution forum to the users of the forum. The final 1998 Budget for the Office, however, which includes transfer pricing of services provided by other NASD departments to the Office, projects total expenses of approximately $35.2 million versus projected revenue of approximately $29.1 million, leaving a revenue shortfall of approximately $6.1 million. The proposed fees are designed to recover all of the Office's costs that are not recovered through filing fees, hearing session deposits, forum fees,[2] and member surcharges and to make the Office's activities self-funding in a manner that generally reflects the extent of the use of resources in a given case.

The process fees will be assessed in two parts: (1) The Prehearing Process Fee for the activities in the case from the filing of the claim up to and including the Prehearing Conference; and (2) the Hearing Process Fee for the activities relating to the evidentiary hearing, award and case closing. If the member concludes its involvement in a case through dismissal or settlement, the process fees accrued to that point will be assessed. In addition, if an associated person of a member is named in a proceeding, but the member is not named, the member employing the associated person at the time of the events that gave rise to the dispute will be assessed the process fees when the associated person's involvement in the case is concluded.

The Prehearing Process Fee will accrue in three cumulative stages. When a claim is filed, a $50 fee will accrue against each member named in the claim.[3] When the first answer to the

[1] The first two stages involved increasing the surcharge on members named in arbitration proceedings and increasing filing fees and hearing session deposits. The increase in the member surcharge was submitted to the SEC for approval in rule filing SR–NASD–97–40 and was approved by the SEC. It was implemented on July 1, 1997. The proposed increases in filing fees and hearing session deposits were originally submitted to the SEC for approval in rule filing SR–NASD–97–39, resubmitted in rule filing SR–NASD–97–79, and are currently pending SEC approval.

[2] Forum fees are the charges for hearing sessions assessed at the end of a proceeding. Forum fees are calculated by multiplying the number of hearing sessions by the applicable hearing session deposit.

[3] As discussed above, if an associated person of a member is named, but the member employing the associated person is not named, the process fee will

Continued

claim is received or due, an additional $150 fee will accrue. Finally, when the arbitrators are selected, a fee of $400 will accrue against each member in the case, for a maximum assessment against each member of $600. The Prehearing Process fee will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing. These fees will not be dependent on the amount of the claim.

The Hearing Process Fee will accrue and become due and payable when the parties are notified of the date and location of the first hearing session. The Hearing Process Fee will be a graduated fee ranging from $1000 to $5000, based on the amount in dispute.

If an associated person is named, the member firm that employed the associated person at the time the claim arose will be assessed fees; however, a member will only be assessed once for each case even if both the member and an associated person (or more than one associated person) of the member are named as respondents. [4]

NASD Regulation believes that, by structuring the process fees in the manner proposed, the Office's costs will be recovered even if there are significant variations in the number of cases that proceed all the way through a hearing. Moreover, NASD Regulation believes that the proposed process fees may encourage settlements because significantly greater fees will be incurred by members once the matter proceeds to hearing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act [5] in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility and requires member firm users to absorb a reasonable share of the costs of operating the arbitration program.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited on received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (e) of Rule 19b–4 thereunder, [7] in that the proposal constitutes a fee which the NASD imposes on its members. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–88 and should be submitted by January 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–33405 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

accrue against the member employing the associated person at the time of the events which gave rise to the dispute. References in this rule filing to fees assessed against members named in the proceeding will also refer to the circumstance where the member is not named in the proceeding, but is assessed the fee because a present or, where applicable, former associated person of the member is named in the proceeding.

[4] As with the member surcharge, the proposed process fees will be assessed only against members. They will not be assessed against associated persons. In addition, because the process fee will be assessed against a member if an associated person of the member is named in a proceeding, members would be required to pay the process fee, for example: (1) Where a member brings an arbitration case against an associated person to recover on an promissory note; (2) where an associated person brings an arbitration case against a member for defamation or wrongful discharge; or (3) where a customer brings an arbitration case against an associated person but does not name the member that employed the associated person at the time of the events that are the subject of the claim.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD08–97–045]**

### Lower Mississippi River Waterway Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

**DATES:** The meeting will be held from 9 a.m. to approximately 11 a.m. on Wednesday, January 28, 1998.

**ADDRESSES:** The meeting will be held in the basement conference room of the Hale Boggs Federal Building located at 501 Magazine Street, New Orleans, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** M. Monty Ledet, USCG, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

Election of Committee Chairman.
Election of Committee Vice Chairman.
Approval of the September 10, 1997 minutes.
Subcommittee Reports.
Old Business.
New Business.
Adjournment.

**Information on Services for Individuals with Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the

meeting, contact M. Monty Ledet, Marine Safety Division, Eighth Coast Guard District, at the number listed in **FOR FURTHER INFORMATION** above, as soon as possible.

Dated: December 15, 1997.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 97–33463 Filed 12–22–97; 8:45 am]

**BILLING CODE 4910–14–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Department of Transportation, Federal Aviation Administration (DOT/FAA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting a clearance in accordance with 5 CFR #1320.10. The following information describes the nature of the information collection and its expected burden.

**DATES:** Submit any comments to OMB and FAA by February 23, 1998.

**SUPPLEMENTARY INFORMATION:**

*Title:* Flight Standards Customer Satisfaction Survey #2.

*Need:* The need is for the Flight Standards Service to survey customers in keeping with our strategic initiative to improve the quality of our service by anticipating customer needs and responding to the public interest. The action of conducting customer satisfaction surveys is consistent with, and mandated by, such executive and federal level issuances as the September 1993 Presidential Executive Order, Vice President Gore's Report of the National Performance Review, and the FAA's Strategic Plan.

The completion of this survey is voluntary. No assurance of confidentiality is provided as the respondents are not asked to reveal information about themselves, except if they wish to do so voluntarily in the comments section. Additionally, we are stating in the questionnaires themselves that any names or identifying information will be redacted by the contractor before a list of comments is turned over to the FAA.

*Respondents:* A combination of approximately 53,625 airmen, air operators, or air agencies are expected to respond.

*Frequency:* Every 18 months.

*Burden:* The Federal burden is approximately $205,500; the respondent burden is approximately 10,725 hours and $375,000.

**FOR FURTHER INFORMATION:** or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC, on December 17, 1997.

**Steve Hopkins,**

*Manager, Corporate Information Division, ABC–100.*

[FR Doc. 97–33462 Filed 12–22–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held January 7, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

This plenary meeting will be preceded by a meeting of SC–165 Working Group (WG)–3, AMSS System/Service Criteria, on January 5–6.

The plenary agenda will be as follows:

(1) Welcome and Introductions;
(2) Review and Approval of the Summary of the Previous Meeting;
(3) Chairman's Remarks;
(4) Overview of New Developments Relevant to AMSS and SC–165:
  a. Required Communications Performance (SC–169/WG–2);
  b. AMCP WG–A on AMSS; c. AMS (R)S Spectrum Issues;
  d. AEEC 741 and 761 Characteristics;
  e. Industry, Users, Government Comments;
(5) Review of Working Group Activities:
  a. WG–1 (AMSS Avionics Equipment MOPS); b. WG–3 (System/Service Performance Criteria); c. WG–5 (AMS(R)S Satcom Voice);
(6) Other Business;
(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www/rtca/org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 1997.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 97–33461 Filed 12–22–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

### National Highway Traffic Safety Administration

### Intelligent Vehicle Initiative; Request for Information

**AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice; request for information.

**SUMMARY:** The USDOT is seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on the Intelligent Vehicle Initiative (IVI). The IVI is being established as a major new component of the Intelligent Transportation Systems (ITS) Program. The intent of the IVI is to improve significantly the safety and efficiency of motor vehicle operations by reducing the probability of motor vehicle crashes. To accomplish this, the IVI will accelerate the development, availability, and use of driving assistance and control intervention systems to reduce deaths, injuries, property damage, and the societal loss that result from motor vehicle crashes. These systems would help drivers process information, make decisions, and operate vehicles more effectively. These systems would

include provisions for warning drivers, recommending control actions, intervening with driver control, and introducing temporary or partial automated control of the vehicle in hazardous situations. The IVI systems also would improve mobility and highway efficiency through the application of selected motorist information services. Sensing, processing, and communications technologies would be installed in passenger vehicles, trucks, and buses, and may be complemented by highway infrastructure technology. These integrated technologies would be linked to automated actuators and controls as well as in-vehicle driver interfaces that adhere to well-founded human factors requirements. The purpose of this document is to solicit comments on the approach, to obtain expressions of interest in the participation, and to request responses to specific questions provided in this document. This is neither a request for proposals nor an invitation for bids.

**DATES:** Comments on this announcement should be submitted on or before January 30, 1998.

**ADDRESSES:** Responses to this announcement must be mailed directly to the Federal Highway Administration, Intelligent Transportation Systems Joint Program Office, HVH–1, Room 3400, Washington D.C. 20590. See Supplementary Information section for electronic access and filing addresses.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Ray Resendes, ITS Joint Program Office, (202) 366–2182; Mr. George Ostensen, (703) 285–2021; or Ms. Rose McMurray, (202) 366-2742. For NHTSA: Dr. Joseph Kanianthra, (202) 366–5662. For FTA: Mr. Walter Kulyk, (202) 366–5991. All are located at the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing Addresses

You may submit comments and data by sending electronic mail (E-mail) to: raymond.resendes@fhwa.dot.gov.

E-mail responses are encouraged. Your comments on these important issues are greatly appreciated, but the USDOT will not be able to acknowledge responses.

## Background

Within the ITS Program, the USDOT has conducted research and development to improve driving safety and efficiency. These include the Driver Vehicle Interface, Collision Avoidance, Automated Highway Systems, and Motor Carrier Research Programs. The IVI will take advantage of these maturing USDOT programs and the synergism inherent in their close coordination. The IVI will unite these programs into a common framework focusing on multi-functional integration of proven systems using autonomous vehicle-based technology complemented by highway-based technologies. The mix of desirable and cost-effective technologies may vary among passenger vehicles, trucks, and buses.

During the past few months, the staffs of the FHWA, the NHTSA, and the FTA have met to review the ongoing and planned research and development programs of these three agencies that may contribute to the IVI. These agencies have identified areas of common interest, synergies among ongoing projects, compatibilities among passenger vehicles, trucks, and buses, and opportunities for joint participation. Following these interagency discussions, the USDOT decided that this progress should be shared with all interested public and private sector stakeholders and comment should be sought.

Given the differing interests and priorities of various stakeholders, the USDOT recognizes that to formulate and develop an IVI program, it is desirable to have the joint participation of these groups for information purposes. Therefore, the USDOT proposes the establishment of a working group that would provide information to the USDOT so that the agency can adequately define and implement the IVI program. The working group would be administered by, and report findings to, the Intelligent Transportation Society of America (ITS America).

Motor vehicle crashes and other incidents exact high penalties in fatalities, injuries, and economic costs resulting from emergency and health care, property damage, and highway congestion. The NHTSA estimates that the financial burden of these crashes exceeds $150 billion per year. If highway safety is to be improved significantly, the number of highway crashes must be cut.

The objectives of the IVI program are to advance the state of availability of in-vehicle systems to: (1) Improve highway safety by reducing the number and severity of crashes, and (2) improve highway efficiency, mobility, and productivity, and environmental quality by increasing traffic throughput, lowering vehicle operating costs, and achieving more predictable travel times. These objectives would be realized by facilitating and accelerating the early availability, use, and acceptance of effective driving assistance, control intervention, and motorist information capabilities. Achievement of the safety-related benefits is the highest IVI program priority.

It is envisioned that the IVI program would include cooperative efforts with partners from the motor vehicle industry to develop advanced systems, integrate them into vehicles and appropriate infrastructure, and evaluate performance in real-world conditions. The IVI program would also develop and validate performance specifications and design guidelines for systems that would improve significantly the safety of motor vehicle operations.

Jointly with industry and other stakeholders, the USDOT would establish measurable objectives and milestones for IVI systems applicable to passenger vehicles, commercial trucks, and both intercity and transit buses.

The IVI is a multi-agency USDOT research, development, and evaluation program. It is intended that the IVI program would extend and expand current partnerships with the private sector and other stakeholders. It would merge all vehicle-focused ITS activities under one program. The IVI would emphasize the significant and continuing role of the driver in highway safety. It would cover applications for passenger vehicles, light trucks, vans, sport and utility vehicles, commercial trucks, transit and intercity buses, and specialized vehicles, such as, emergency and enforcement vehicles, highway maintenance vehicles and snow plows, on all types of highways.

The IVI safety features would include capabilities to warn drivers of hazardous situations, recommend safe remedial vehicle control actions, assist drivers in avoiding highway collisions, and in some cases, intervene with partial or temporary control. Hazardous situations may arise due to any combination of driver, vehicle, or highway-related problems. The IVI safety features would rely heavily on advanced electronic and communication capability and would supplement the capabilities of motor vehicle drivers to operate vehicles safely. Also, the IVI may include vehicles with selected motorist information, navigation, adverse weather information and traveler assistance features to reduce the complexity of driving and to improve travel mobility. It is expected that the IVI system capabilities would be tailored to specific types of vehicles,

such as passenger vehicles, trucks, and buses.

An effort has been initiated within the USDOT to define and coordinate the Department's ongoing vehicle-related safety research. This effort includes the identification of areas of common interest, synergies among ongoing projects, compatibilities among vehicle types, and opportunities for joint participation. The work associated with the initial effort is nearing completion. During the course of this work, it has become clear that suggestions from the public and private sectors on program content and direction would be helpful. In recognition of this opportunity, the USDOT proposes the establishment of a working group that would offer information so that the agency can adequately define the IVI program.

In order to fulfill the program requirements, the IVI must identify and conduct the necessary research to ensure that the driver warning, driver assistance, driver intervention, and travel information systems work effectively and reliably in both independent and integrated modes, that they operate in a consistent and efficient manner and are easily understood by drivers, and that drivers accept and use the systems.

Ongoing and recently completed work on crash avoidance, in-vehicle information systems, automated highway systems, and motor carrier issues would provide a strong foundation for the IVI research. Research would continue throughout the IVI program. This research would address areas such as human factors, sensor performance, conditions where warnings are needed and conditions where warnings would be a nuisance, modeling, evaluation methods, and other in-vehicle and highway-based technologies. The IVI would include assessment of driver acceptance. A mix of analytic, test track, and on-road research, and testing is anticipated. Following testing in an experimental environment, fleets of equipped vehicles would be evaluated in on-road operational settings at various stages of the program. The USDOT would aggressively pursue partnerships and other cooperative arrangements with the motor vehicle, trucking, and bus industries and their suppliers, States and other government organizations, academic institutions, and other interested parties to fulfill the program requirements.

The USDOT developed a roadmap of how the IVI program would proceed. A diagram of the roadmap is shown at the end of this document.

This roadmap represents an attempt to illustrate the broad IVI program elements and the sequence in which these program elements would be accomplished. The duration of the IVI program runs from left to right and it is not drawn to scale. The major boxes in the roadmap include the following:

1. Crosscutting activities represent groups of actions that influence and guide all the major program elements. They include such topics as: Architecture and standards development; research, development, and testing in human factors, communications, and technology; acquisition, expansion, and validation of evaluation tools such as simulation models; development and execution of an outreach plan to ensure joint participation of industry and other stakeholders; development and implementation of field operation evaluation plans; and, program planning and administration covering IVI program definition and oversight, and any other crosscutting functions and responsibilities not covered elsewhere. The technical issues for many individual services are expected to be independent of the vehicle platforms and when this occurs such issues would be studied together.

2. Development of services would cover the research, development, testing, and evaluation of individual crash avoidance and efficiency-enhancing systems, such as those listed under the caption ''Candidate Services'' in this document.

3. Selection of services for integration represents the activities necessary to select specific IVI services (and systems to fulfill those services) and the mix of services that should be included in integrated packages of multiple IVI services. Selection involves extensive work on estimating the benefits and costs, as well as anticipated user acceptance of integrated systems that provide a combination of services.

4. The integrated system design and development step covers the research, development, and prototype testing necessary to fulfill the requirements for fully describing IVI capabilities, as well as system and subsystem specifications for the construction of the vehicles and the infrastructure modifications necessary for field operational tests of integrated systems.

5. The operational tests and evaluations activity, as expected, implements the plans for field tests in real-world settings on actual highways, executes a complete evaluation of the integrated IVI services subjected to the operational tests, develops deployment plans, establishes performance thresholds based on objective test performance, and develops recommendations.

6. Product deployment refers to the actions by motor vehicle manufacturers and their suppliers to make and offer IVI systems to highway users in production motor vehicles. It is anticipated that the IVI systems, after operational tests demonstrate the benefits of their integrated services, would be adopted by the manufacturers as part of their standard product line. Product development also includes actions by State, regional, and local governments to install infrastructure-based IVI system components on their highway systems. This activity is indicated as the final step and the ultimate objective of the IVI program.

**Candidate Services**

The USDOT has concluded that the following services are prime candidates for improvement through application of advanced in-vehicle technology. It is expected that during the course of the IVI program, the mix of individual IVI services selected for integration may vary among passenger vehicles, trucks, and buses. Please note that these services include some existing or slightly modified ITS user services. The following categories of advanced technologies are identified as candidate IVI services because they: (1) Improve safety; (2) may impact safety; (3) provide platform-specific functions; or (4) provide supporting capabilities for other future services.

**Safety Services**

*1. Rear End Collision Avoidance*

This feature would sense the presence and speed of vehicles and objects in front of the equipped vehicle and would provide warnings and limited control of the vehicle speed (coasting, downshifting, or braking) to minimize risk of collisions with vehicles and objects in the vehicle's lane of travel. It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would monitor the motion and location of vehicles and other objects in front of the vehicle and would advise the driver, through an appropriate driver-vehicle interface, of imminent rear-end crashes. These systems may share some elements of, and are expected to complement the performance of, adaptive cruise control systems which are expected to precede collision avoidance systems as a commercial product. Later versions of these systems may include automatic braking in the event of an impending

crash. The performance of these systems may be enhanced through future combination with other systems, such as other collision avoidance systems, route guidance-navigation systems with enhanced map data bases, and cooperative communication with the highway infrastructure to set adaptive cruise control systems at safe speeds.

*2. Road Departure Collision Avoidance*

This feature would provide warning and control assistance to the driver through lane or road edge tracking and by determining the safe speed for road geometry in front of the vehicle. It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would monitor the lane position, motion relative to the road edge, and vehicle speed relative to road geometry and road conditions and would advise the driver, through an appropriate driver-vehicle interface, of imminent unintentional road departure. Later versions of these systems may include cooperative communication with the highway infrastructure to automatically provide safe speeds for upcoming road geometry and conditions. The performance of these systems may be enhanced through future combination with other systems; such as other collision avoidance systems, drowsy driver advisory systems, and route guidance-navigation systems with enhanced map data bases.

*3. Lane Change and Merge Collision Avoidance*

It is expected that the first implementation of this service would be through in-vehicle systems which may be augmented with vehicle-to-vehicle communications. These systems would monitor the lane position, relative speed and position of vehicles, including motorcycles, beside and to the rear of the vehicle and would advise the driver during the decision-phase of a lane-change maneuver, through an appropriate driver-vehicle interface, of the potential for a collision. Later versions of these systems may provide additional advice of an imminent crash to the driver during the action-phase of the lane change or entry-exit maneuver. The performance of these systems may be enhanced through future combination with other systems; such as other collision avoidance systems and roadside communication and sensing systems.

*4. Intersection Collision Avoidance*

It is expected that the first implementation of this service would be through in-vehicle systems which are augmented by information from enhanced map data bases or from cooperative communication with the highway infrastructure. These systems would monitor position relative to intersection geometry, relative speed and position of other vehicles in the vicinity of the intersection and would advise the driver, through an appropriate driver-vehicle interface, of appropriate action to avoid a violation of right-of-way or to avoid an impending collision. Complexities of providing this service include the need to sense the position and motion of vehicles and determining the intent of these vehicles to turn, slow down, stop, or violate right-of-way. A fully autonomous in-vehicle system would probably not be capable of providing this service.

*5. Railroad Crossing Collision Avoidance*

This feature would provide in vehicle warnings to drivers when they approach a railroad crossing that is unsafe to enter due to approaching or present rail traffic. Initial implementation of this feature is anticipated for buses and trucks carrying hazardous cargo. This service, which would share many onboard vehicle components with intersection collision avoidance systems, is dependent on communications and the deployment of infrastructure components.

*6. Vision Enhancement*

It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would use infrared radiation from pedestrians and roadside features to provide the driver with an enhanced view of the road-ahead. Later versions of these systems may include additional information from improvements in the highway infrastructure, such as infrared reflective lane edge markings.

*7. Location-Specific Alert and Warning*

This feature would provide intelligent in-vehicle warning information by integrating vehicle speed and pertinent vehicle dynamics information with knowledge of road geometry (from a map database or beacon input). Later versions would include information about environmental and road surface conditions to provide the driver with warnings, such as excessive speed for curves or alerts on upcoming traffic signs and signalized intersections. This feature may include the ability, at unusually complex and hazardous highway locations, to provide in-vehicle warnings which replicate one or more types of roadside signs. These capabilities would be integrated with other in-vehicle navigation and route guidance features with collision avoidance warning.

*8. Automatic Collision Notification*

It is expected that the first implementation of this service would be through in-vehicle systems which are augmented by communication links to Public Safety Answering Points (PSAP). These systems would monitor position of the vehicle and severity of the crash. This information would be transmitted automatically to the appropriate PSAP for the location of the crash. These systems may also be combined with manually activated systems for requesting roadside assistance.

*9. Smart Restraints and Occupant Protection Systems*

This feature would provide advance warning of impending (forward or side) crashes and would pre-deploy the appropriate occupant protection systems in a vehicle prior to the impact to obtain maximum protection for the vehicle occupants. If reliable under all potential impact situations, this might permit slower deployment speeds for the air bags, allow pre-tensioned or load limited belt systems or smart head protection systems and ultimately more protection for the vehicle occupants.

**Safety Impacting Services**

*10. Navigation/Routing*

This feature would provide location and route guidance input to the driver and would support the various collision avoidance capabilities with road geometry and location data. It would also provide the necessary capability to filter traffic information to select those messages that are applicable to the vehicle location and route of travel. It would also offer the capability to recommend optimal routing based on driver preferences. More advanced versions of this service may integrate real-time traffic conditions into the calculations of optimal routes. For paratransit applications this would assist passenger demand and record keeping.

*11. Real Time Traffic and Traveler Information*

These IVI systems would have capabilities to access in-vehicle databases and receive travel-related information from the infrastructure (roadside or wide-area transmissions). Information categories would include items, such as vehicle location and route guidance instructions, motorist and traveler services information, safety and advisory information, and other

real-time updates on conditions, such as congestion, work zones, environmental, and road surface conditions. This feature would provide an integrated approach to the presentation of information to the driver for safety warnings and other advisories related to the driving task. More advanced system capabilities would include the ability to react to dynamic information on environmental and road condition thereby augmenting information contained in the static map databases.

*12. Driver Comfort and Convenience*

This service is included in the IVI program to ensure that the increasing number of comfort and convenience features in vehicles, such as cellular telephones and fax machines, do not distract the driver or increase the complexity of the driving task. This service would integrate these features into the driver vehicle interface to permit prioritization of information sources and reduce distractions. Real-time dispatching for fleet operations is included in this category.

**Platform Specific Services—Commercial Vehicle**

*13. Vehicle Stability Warning and Assistance*

An early version of this service would assist drivers in maintaining safe speeds on curves by measuring the rollover stability properties of a typical heavy vehicle as it is operated on the roadway, and by providing the driver with a graphical depiction of the vehicle's loading condition relative to its rollover propensity. More advanced services would employ an active brake control system coupled with electronic brake system technology and infrastructure provided information to selectively apply brakes to stabilize the vehicle and, thus, reduce the incidence of rear trailer rollover in double- and triple-trailer combination vehicles during crash avoidance or other emergency steering maneuvers.

*14. Driver Condition Warning*

This service would provide a driver monitoring and warning capability to alert the driver to problems, such as drowsiness or other types of impairments. It is expected that the first implementation of this service would be on commercial and transit vehicles.

*15. Vehicle Diagnostics*

The vehicle diagnostic information service would be an extension of current vehicle monitoring and self-diagnostic capabilities, such as oil pressure and coolant temperature gauges. This service would monitor vehicle safety-related functions. Examples of conditions monitored include braking system integrity, tire pressure, sensor and actuator performance, and the communication system. This information is intended to be useful to the driver, as well as to assist and support fleet maintenance and management functions.

*16. Cargo Identification*

This service would focus on heavy vehicle operations, especially hazardous material transportation. This feature would identify and monitor key safety parameters of the cargo, such as temperature, and pressure. The driver would be warned if any unsafe conditions existed.

*17. Automated Transactions*

This feature would implement capabilities for electronic transactions, such as electronic toll collection, parking fee payment, transit fare payment and additional commercial vehicle-related functions, such as credentials and permit verification, using such technology as transponders and ''smart cards.''

*18. Safety Event Recorder*

This feature would record selected driver and vehicle parameters to support the reconstruction of conditions leading to a critical safety event. Data from this recorder could provide input to the crash notification subsystem for transmission of collision data to the emergency service provider.

**Platform Specific Services—Transit Vehicles**

*19. Obstacle/Pedestrian Detection*

This service would warn the driver when pedestrians, vehicles, or obstacles are in close proximity to the driver's intended path. This could be accomplished with on-board sensors or infrastructure-based sensors communicating to vehicles.

*20. Tight Maneuver/Precision Docking*

This service would position the bus or commercial vehicle very precisely relative to the curb or loading platform. The driver would maneuver the bus into the loading area and then turn it over to automation. Sensors would continually determine the lateral distance to the curb, front and rear, and the longitudinal distance to the end of the vehicle loading area. The driver would be able to override at any time by operating brakes or steering, and would be expected to monitor the situation and take emergency action if necessary (for example, if a pedestrian steps in front of the vehicle). When the vehicle is properly docked, it would stop and revert to manual control. In freight or bus terminals this service could increase facility throughput as well as safety.

*21. Transit Passenger Monitoring*

This service would assist the driver in detecting any passenger activities that may affect the safety or security of the vehicle's operation.

*22. Transit Passenger Information*

This service would provide transit passengers with real-time transit network information during travel. The emphasis within the IVI program would be to reduce the non-driving task workload of the driver by providing alternative means for passengers to access location and transit service information.

**Platform Specific Services—Special Vehicle**

*23. Fully Automated Control at Certain Facilities*

This service would enhance efficiency and productivity by providing automated movement of vehicles in dedicated facilities. Initial applications may include automated bus movement in maintenance areas and automated container movement within a terminal area. The transit bus application could be a preliminary use of automation in a low-speed, controlled environment. The automated container movement application would consist of using vehicle automation technologies to move containers within rail-, truck-, or ship-yards or other centralized facilities.

**Supporting Services**

*24. Low Friction Warning and Control Assist*

This service would initially warn the driver of reduced traction, but in advanced configuration, would also provide control assist capabilities to assist the driver in regaining control of the vehicle. Sensors on-board the vehicle would detect when the tire-to-road surface coefficient of friction is reduced due to water, ice, or road surface condition.

*25. Longitudinal Control*

Longitudinal control would range from normal cruise control to advanced cooperative cruise control and applications which permit full automatic braking. Intelligent cruise control senses the presence and relative velocity of moving vehicles ahead of the equipped vehicle, and adjusts the speed of travel to maintain a safe separation between vehicles. Vehicle speed is adjusted either by allowing the vehicle

to coast or by transmission downshifting. More advanced longitudinal control systems would be capable of detecting a vehicle ahead in the same lane, which may be traveling at any speed or may be fully stopped. A full range of braking capability and operating speeds would be available to the equipped vehicle, including stop-and-go traffic operations. This service can be provided by autonomous in-vehicle systems or with assistance from vehicle-to-vehicle and vehicle-infrastructure cooperation.

*26. Lateral Control*

This service would sense the center of the lane and continually actuate the steering to keep the vehicle in the center of its lane. For the service to dependably detect the lane boundaries, some infrastructure cooperation may be required, such as accurately painted lane marker stripes, embedded magnetic nails, or radar-reflective stripes. The driver would be able to assume control at any time.

**Purpose of Comment Solicitation**

This document solicits comments on the IVI, expressions of interest to participate with a proposed working group to provide the USDOT with information so that the agency can adequately define and implement the IVI program, and comments on other questions or issues regarding this topic. It must be emphasized that the working group is being established for the purpose of providing information to ITS America so the USDOT can formulate the IVI program. The USDOT could potentially enter into partnerships with members of the working group.

**IVI Issues**

Important issues related to the IVI are facing the USDOT and others, in both the public and private sectors. Responses to the following questions are requested to help the DOT as it finalizes the organization of the IVI program. As appropriate, please reference experiences you may have had that address the issues.

1. Would you or your organization be interested in participating in the working group, or in cooperative research and development for the IVI program? If yes, in what way? If not, what would encourage you to participate?

2. (a) Does the sequence of steps outlined in the roadmap provide a meaningful description of the system integration process? Are there other elements that need to be added to the roadmap? What criteria should be used in the selection of systems to be integrated? What steps need to be taken to ensure compatible deployment timetables for the infrastructure and in-vehicle parts of cooperative systems?

(b) Each of the listed services is currently the subject of a development program within the USDOT, or is already a fully developed service. Are there services that should be added or deleted from this list?

(c) The USDOT believes that it is feasible to develop systems to provide the listed services in the near term. Are there other longer-term services that the USDOT should be considering?

3. What new areas of research and development would be required to support the IVI program?

4. What are the critical issues that need to be addressed and the activities that should be initiated to hasten the deployment of advanced technology systems for providing each of the listed services?

5. What data are currently available to quantify the expected benefits, user acceptance, and costs of systems that can provide the listed services? What approaches can be used to obtain new estimates of those benefits, user acceptance, and costs?

(23 U.S.C. 307 note and 315; secs. 6051–6059, Pub. L. 102–240, 105 Stat. 1914, 2189 as amended by sec. 404, Pub. L. 102–388, 106 Stat. 1564, and sec. 338, Pub. L. 104–59, 109 Stat. 603, 604; and 49 CFR 1.48)

Issued: December 11, 1997.

**Ricardo Martinez,**

*Administrator for National Highway Traffic Safety Administration.*

Issued: December 11, 1997.

**Gordon J. Linton,**

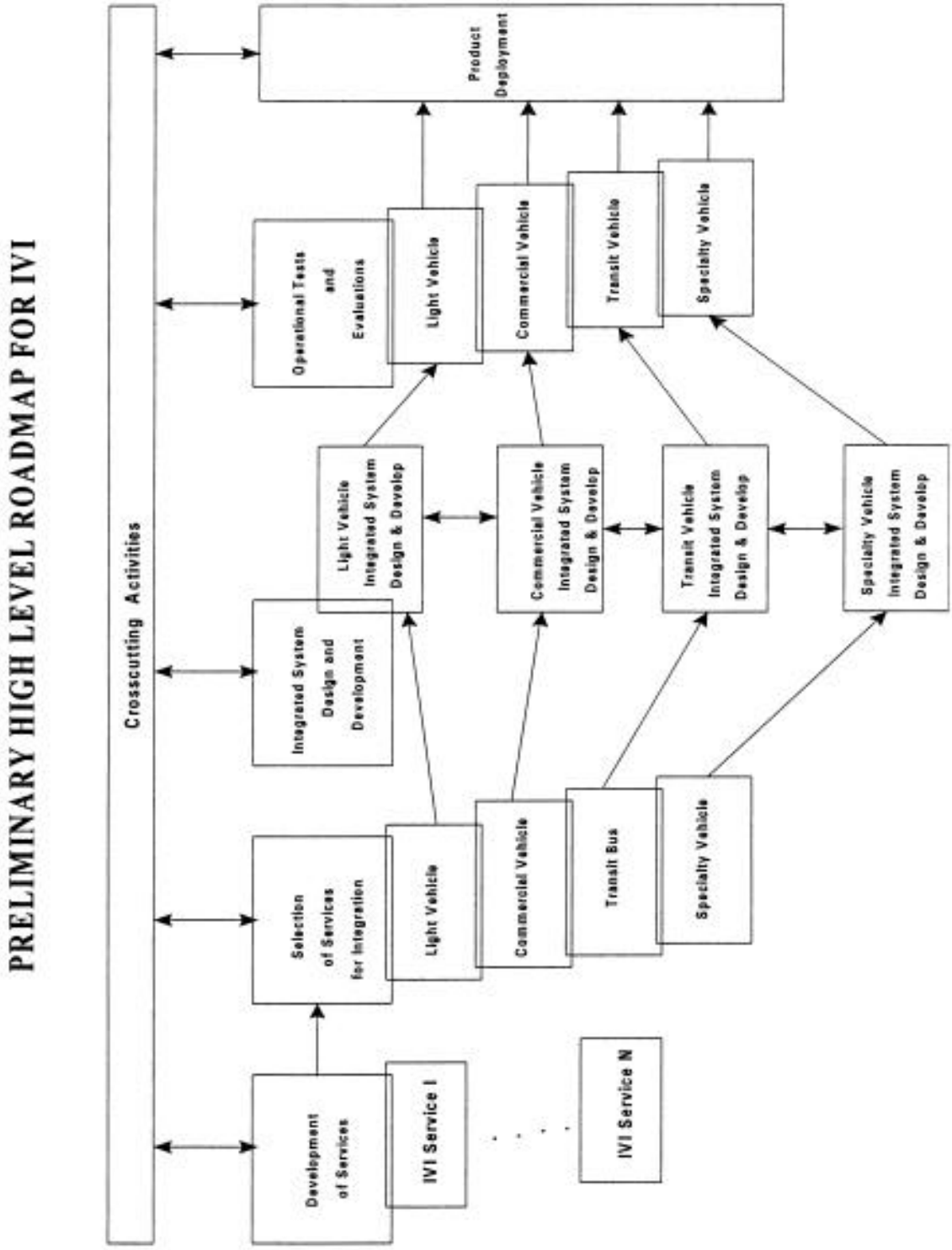
*Federal Transit Administrator.*

Issued: December 11, 1997.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

BILLING CODE 4910–24–P




[FR Doc. 97–33348 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–22–C

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications For Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before January 22, 1998.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

NEW EXEMPTIONS

| Application number | Docket number | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 11999–N ..... | RSPA–97–3227 ..... | Rhone-Poulenc, Shelton, CT. | 49 CFR 174.67(i)&(j) .... | To authorize rail cars to remain connected during unloading operation of Class 3 and 8 material without the physical presence of an unloader. (mode 2). |
| 12000–N ..... | RSPA–97–3228 ..... | Primex Technologies, St. Petersburg, FL. | 49 CFR 172.400 ..... | To authorize the transportation in commerce of Division 1.3C material in M13A2 metal containers without required labelling. (modes 1, 3). |
| 12001–N ..... | RSPA–97–3229 ..... | Albemarle Corporation, Baton Rouge, LA. | 49 CFR 172.101, B14 .. | To authorize the transportation in commerce of toxic liquid, corrosive, inorganic, n.o.s., Division 6.1, PIH Zone B, in uninsulated MC 330 or MC 331 tank trailers. (mode 1). |
| 12002–N ..... | RSPA–97–3230 ..... | Yellowstone Pipe Line Co., Thompson Falls, MT. | 49 CFR 174.67(g) ..... | To authorize the use of pressure as an alterative method of removing frozen liquid from tank car bottom outlets instead of steam and hot water. (mode 2). |
| 12003–N ..... | RSPA–97–3231 ..... | Degussa Corporation, Ridgefield Park, NJ. | 49 CFR 172.102, T–15, T–37. | To authorize the transportation in commerce of hydrogen peroxide, stabilized, Division 5.1, that exceed the 72% maximum concentration allowed in IM 101 tank cars and cargo tanks. (modes 1, 3). |
| 12004–N ..... | RSPA–97–3232 ..... | Alfa SA, Portugal ..... | 49 CFR 173.304, 173.34(e)(9), 175.3, 178.51. | To authorize the manufacture, mark and sale of non-specification cylinders comparable to DOT-Specification 4BA for use in transporting certain Class 2 material. (modes 1, 2, 4). |
| 12005–N ..... | RSPA–97–3233 ..... | Boeing North American, Inc., Canoga Park, CA. | 49 CFR 173.302 ..... | To authorize the transportation in commerce of a specially designed unit equipped with a cylinder charged with xenon gas, Division 2.2, as part of a space station project. (mode 1). |
| 12011–N ..... | RSPA–97–3234 ..... | Compagnie des Containers Reservoirs, France. | 49 CFR 173.32b(b) ..... | To authorize alternative internal inspection period of IMO Type 1 portable tanks used in dedicated service for the transportation of Division 6.1 material. (modes 1, 2, 3). |
| 12014–N ..... | RSPA–97–3235 ..... | The Trane Co., TEN–E Packaging Services, Newport, MN. | 49 CFR 173.306(e)(1) .. | To authorize the transportation in commerce of used refrigerating machines containing no more than 1000 pounds of Class A refrigerants classed in Division 2.2. (mode 1). |
| 12015–N ..... | RSPA–97–3236 ..... | Elf Atochem North America, Inc., Philadelphia, PA. | 49 CFR 174.67(i)&(j) .... | To authorize tank cars containing various hazardous materials to remain standing with unloading connections attached when unloading has been temporarily discontinued or unloading incomplete without the physical presence of an unloader. (mode 2). |

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 17, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 97–33378 Filed 12–22–97; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before January 7, 1998.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 10798–M | ..... | Olin Corporation, Norwalk, CT[1] ..... | 10798 |
| 11458–M | ..... | Reckitt & Colman, Montvale, NJ[2] ..... | 11458 |
| 11962–M | RSPA–97–3061 ..... | Bayer Corp., Pittsburgh, PA[3] ..... | 11962 |
| 12007–M | RSPA–97–3225 ..... | SCC Products, Hollister, CA[4] ..... | 12007 |
| 12009–M | RSPA–97–3226 ..... | U.S. Department of Justice, Washington, DC[5] ..... | 12009 |

[1] To modify the exemption to provide for Class 9 as an additional class of material contained in tanks cars which remain standing with unloading connections attached when no product is being transferred.

[2] To modify the exemption to provide for cargo vessel as an additional mode.

[3] To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of sodium, Division 4.3 in accumulators.

[4] To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of chloropicrin, Division 6.1, in reusable DOT4BA260 cylinders equipped with alternative plug.

[5] To reissue exemption originally issued on an emergency basis to authorize the transportation in commerce of anhydrous ammonia in nonspecification cylinders.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 17, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 97–33379 Filed 12–22–97; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–55 (Sub–No. 552X); STB Docket No. AB–290 (Sub-No. 201X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, WV; Norfolk and Western Railway Company—Discontinuance of Trackage Rights Exemption—in Raleigh County, WV

On December 3, 1997, CSX Transportation, Inc. (CSXT), and Norfolk and Western Railway Company (N&W)[1] filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for CSXT to abandon and N&W to discontinue trackage rights over approximately 6.24 miles of line between milepost CAR–0.58 at Beckley Junction, WV, and milepost CAR–6.82 at the end of the track at Cranberry, WV, which traverses U.S. Postal Service ZIP Codes 25801, 25813, 25827, 25832, 25919, and 25920, in Raleigh County, WV. The line includes the stations of Beckley, located at milepost CAR–1, Sprague, located at milepost CAR–4, Skelton, located at milepost CAR–5, and Cranberry, located at milepost CAR–6.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

[1] N&W is a wholly owned subsidiary of Norfolk Southern Railway Company.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.— Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 23, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 12, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–55 (Sub-No. 552X) and AB–290 (Sub-No. 201X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street—J150, Jacksonville, FL 32202; and James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: December 12, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–33336 Filed 12–22–97; 8:45 am]

BILLING CODE 4915–00–P

# Corrections

**Federal Register**

Vol. 62, No. 246

Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563-AA78**

### Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Seed Corn Crop Insurance Provisions

*Correction*

In rule document 97–32498 beginning on page 65344, in the issue of Friday, December 12, 1997, make the following corrections:

**§ 457.152 [Corrected]**

1. On page 65351, in the third column, in § 457.152 paragraph designated 11(a), in the fifth line, ''and'' should read ''that''.

2. On page 65352, in the first column, in § 457.152 paragraph designated 12(c)(6), in the last line, ''result of 1or variety; and'' should read ''result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and''.

**BILLING CODE 1505-01-D**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 506, 544, 545, 552, 559, 560, 561, 563, 565, 567, 575

**[No. 97-126]**

### Technical Amendments

*Correction*

In rule document 97–32829 beginning on page 66260 in the issue of Thursday, December 18, 1997, in the **EFFECTIVE DATE** section ''December 18, 1998'' should read ''December 18, 1997''.

**BILLING CODE 1505-01-D**

Federal Register

Tuesday
December 23, 1997

# Part II

# Department of Labor

## Office of Workers Compensation Programs

## 20 CFR Parts 10 and 25

## Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States; Proposed Rule

**DEPARTMENT OF LABOR**

**Office of Workers' Compensation Programs**

**20 CFR Parts 10 and 25**

**RIN Number 1215–AB07**

## Claims for Compensation under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

**AGENCY:** Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of Labor proposes to revise the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to all civilian Federal employees and certain other groups of employees and individuals who are injured or killed while performing their jobs. The Office of Workers' Compensation Programs (OWCP) administers the FECA.

The existing rules have been entirely rewritten using plain English and have also been reorganized into a more accessible format. A number of significant changes are made in the proposed regulations, including new sections implementing amendments to the law which provide for suspension of benefits during incarceration and termination of benefits for conviction of fraud against the program; changes to the continuation of pay (COP) provisions, including reducing to 30 days the time within which COP may be used where there is a recurrence of disability; paying for an attendant as a medical expense instead of as a supplemental payment to the claimant; inclusion of OWCP nurse services in the definition of vocational rehabilitation services; clarifying the review process by distinguishing between modification on the Director's own motion (in which case no new evidence or argument is needed to reopen claim) and reconsideration at the request of the claimant (which will require the claimant to provide new evidence or argument to reopen the claim); restricting opportunities to postpone oral hearings; clarification of subpoena authority; streamlining the standards for review of attorney fees; provision of more detailed guidance in regard to claims involving the liability of a third party; and clarification of procedures with respect to claims filed by non-Federal law enforcement officers. Also included in the proposed regulations is a major revision of the medical fee schedule to include, for the first time, pharmacy and inpatient hospital bills.

**DATES:** Written comments must be submitted on or before February 23, 1998.

**ADDRESSES:** Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–7552.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Markey, Director for Federal Employees' Compensation, Telephone (202) 219–7552.

**SUPPLEMENTARY INFORMATION:** The FECA provides compensation for wage loss, medical care, and vocational rehabilitation to Federal employees and certain other individuals who are injured in the performance of their duties, or who develop illness as a result of factors of their Federal employment. It also provides monetary benefits to the survivors of employees who are killed in the performance of duty or die as the result of factors of their Federal employment.

The program's regulations were last substantially revised in 1987. Since then, new provisions have been added to the statute, and experience has shown that certain parts of the regulations need clarification or revision to improve and streamline the claims process. In addition, there has been a significant increase in the number and complexity of OWCP issues requiring adjudication, which has strained the administrative resources available to fulfill OWCP's statutory mandate to adjudicate and administer claims. In addition, several developments have enabled OWCP to devise a fee schedule applicable to hospital inpatient and pharmacy bills. For all of these reasons, the rules have been comprehensively rewritten.

The proposed rules look significantly different than the existing rules. This is both because they have been completely reorganized into a format reflecting the organization of the claims process itself and because they are presented in a question-and-answer format instead of the narrative form used in the existing rules. We believe that the new organization and style of the regulations presents the information in a way consistent with the needs of the user, and will help the reader more easily find information. In addition, unnecessary information has been eliminated and material which simply repeats the language of the statute itself has been removed from various portions of the regulations.

The regulations have been re-numbered and substantially re-worded. The sections have been grouped by type of claims, where appropriate, so that the reader who wants to know about filing death claims, for example, need only turn to one section to get essentially all the basic information about how such claims are filed.

A description of other significant changes made by these regulations follows. Cross references from new sections to the existing ones are made to allow the reader to better follow the changes.

### Subpart A, General Provisions

This subpart is substantially the same as current subpart A (§§ 10.1 through 10.23), with the addition of material describing the penalties imposed as a result of the amendments to the FECA that added 5 U.S.C. 8148.

*Introduction*

Section 10.2 has been revised to reflect two changes: employees of the Alaska Railroad are no longer covered under the FECA; and administration of the FECA for Panama Canal Commission employees was returned to OWCP in 1989.

*Definitions and Forms*

Section 10.5 now includes definitions that used to appear in several later subparts. Definitions of terms defined in the FECA itself, such as *injury, organ* and United States Medical Officers and Hospitals, no longer appear in the regulations, because it is felt to be unnecessary to repeat these statutory provisions.

Section 10.5(a) revises the definition of *Benefits* or *Compensation* to clarify that those terms include the amounts paid out of the Employees' Compensation Fund for medical examinations conducted at the request of OWCP as part of the claims adjudication process, consistent with OWCP's longstanding practice.

Section 10.5(g) moves the definition for *Earnings From Employment Or Self-Employment* from its existing location in Section 10.125(c) and revises it to clarify that earnings from self-employment include a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. This revision is consistent with several decisions by the Employees' Compensation Appeals Board (ECAB) in this area. See, e.g., Edward O. Hamilton, 39 ECAB 1131 (1988); William C. Austin, 39 ECAB 357 (1988).

Section 10.5(h) replaces the lengthy and cumbersome list which constituted the old definition for Employee with a shorter list that omits references to coverage afforded pursuant to other specific statutes, since the material omitted merely referenced other statutory provisions.

Section 10.5(i) simplifies and updates the definition of *Employer* or *Agency* by broadening it to make clear that it encompasses the various titles now used by different agencies for persons designated to perform the employer's tasks in the FECA claims process. This streamlining is not intended to in any way change existing practice.

The definition of *Knowingly* in section 10.5(n) is new. It adopts the definition for this term, consistently used by the ECAB in numerous forfeiture cases construing section 8106(b)(2). See, e.g., Garry Don Young, 45 ECAB 621 (1994); Lewis George, 45 ECAB 144 (1993).

Section 10.5(x) replaces the existing discussion of Recurrence Of Disability found in § 10.121, which merely provides that a recurrence occurs when the original injury causes the employee to stop work again. The definition of recurrence being added to the regulations reflects OWCP's understanding of the term recurrence as explained by the ECAB in numerous cases which have thoroughly examined both the medical and non-medical aspects of this issue. The new definition will also enable OWCP to recognize the changes that have occurred in the nature of federal employment in this era of continued government downsizing by specifically addressing some situations that arise as agencies close work sites. See, e.g., Terry R. Hedman, 38 ECAB 222 (1986); John W. Normand, 39 ECAB 1378 (1988); Don J. Mazurek (Docket No. 93–2063, January 23, 1995).

The definitions of *Occupational Disease* or *Illness, Physician* and *Student* have been shortened, with no intent to make a substantive change, by deleting (or simply referring to) definitional material which already appears in the FECA.

In § 10.6, current § 10.5(b) is updated to include a new category of ''dependents'' for purposes of implementing new section 8148 of the FECA. That amendment requires a suspension of benefits when a claimant is incarcerated for a felony, but allows instead payments of a portion of those benefits to eligible dependents.

*Rights and Penalties*

Sections which merely repeat provisions of the statute (such as the reference to the FECA as the exclusive remedy for employees and their families) have been removed. Proposed § 10.16 provides information about various provisions of criminal law relating to the FECA claims process. In addition to the description of the penalties, a statement has been added explaining that enforcement of the criminal laws applicable to FECA activities is solely within the jurisdiction of the Department of Justice. This is intended to eliminate confusion on the part of some individuals who ask that OWCP enforce these criminal law provisions.

Section 10.17 implements a recent addition to the FECA, section 8148(a). Pursuant to section 8148(a), any beneficiary convicted of defrauding the federal government in connection with a FECA claim forfeits his or her right to further compensation ''as of the date of such conviction.'' To implement this provision in a uniform manner consistent with the intent of the statute, the term ''conviction'' is interpreted in this section as occurring either on the date that a guilty plea is made in open court or the date that a verdict of guilty is returned after trial.

This interpretation, which is consistent with opinions issued by the Comptroller General and instructions issued by that office, ensures consistency among various government agencies and permits uniform application of these procedures despite variations among jurisdictions with respect to how the term ''conviction'' has been defined for other purposes. In addition, choice of the date a guilty plea is made in open court or a verdict of guilty is returned after trial facilitates implementation of the statutory provisions because the date is easy to ascertain following the submission of pertinent factual evidence, such as a copy of a plea agreement or a judgment order that has been filed in a criminal case.

Section 10.18 implements another recent addition to the FECA, section 8148(b). Pursuant to section 8148(b), which is similar to provisions of several state workers' compensation statutes and a provision in the Social Security Act, any beneficiary incarcerated for either a state or federal felony conviction forfeits his or her right to compensation during the period of such incarceration. However, this section also provides the OWCP with the discretionary authority to allocate ''a percentage of the benefits that would have been payable'' to an incarcerated beneficiary among his or her dependents using the percentages stated in section 8133(a)(1) through (5).

In exercise of this discretion, OWCP has selected the gross current entitlement of an incarcerated beneficiary as a ''percentage'' of such beneficiary's ''monthly pay'' under section 8101(4), and the proposed regulation provides that the resulting amount will be divided, using the percentages of section 8133(a)(1) through (5), among his or her dependents during the period of any such incarceration.

**Subpart B, Filing Notices and Claims; Submitting Evidence**

This subpart contains most of the information in current §§ 10.100 through 10.122, 10.130, and 10.140. The material in current § 10.102(e), which addresses the employer's authority to provide copies of forms and other records pertaining to a claim, is now addressed generally in subpart A, § 10.12. Current § 10.104, regarding physicians' reports, has been moved to subpart D (Medical and Related Benefits). Current § 10.109(a) (concerning the payment of the balance of schedule awards) has been moved to subpart E (Compensation and Related Benefits).

The discussion of development of claims by OWCP found in current § 10.110(b) has been omitted from the proposed regulations. This discussion has proven to be misleading, and was mistakenly assumed to be a commitment by OWCP to undertake development, despite the fact that it only describes what OWCP may, on an ad hoc basis, do even though the burden of proof to establish the elements of the claim is on the claimant at all times. The statements in current § 10.120 and § 10.121(d) requiring the employer to report termination of disability on Form CA–3 have been removed, as this procedure is no longer required. Current § 10.150, which describes OWCP's function within the sphere of workers' compensation law generally, has been entirely removed as unnecessary.

*Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions*

In § 10.100 and 10.102, which discuss notices of injury and occupational disease, the statements that the employer (or another person) may file a notice of injury on the employee's behalf are new, although the practice it describes is a longstanding one. This provision is being added to the regulations to encourage prompt filing of claims. OWCP cannot provide case management services, which assist in a rapid return to work in the crucial early days of disability, without prompt notice. An informational statement that a claimant may withdraw a claim before

it has been adjudicated has also been added to these sections as well as to § 10.106.

Section 10.101 highlights the need for the employee to file a wage loss claim (form CA–7 or CA–8) in order to receive wage-loss benefits (compensation); this is in addition to the initial notice of injury (form CA–1 or CA–2) which must be filed for every injury, whether or not the injury results in lost wages. The need to file a separate claim for wage loss has in the past sometimes been a point of confusion among claimants, who do not realize that even though they filed the form notifying OWCP of an injury, OWCP has no way of knowing that the person has stopped work and lost wages unless the CA–7 or CA–8 claims for wage loss are also filed. In addition, the 10-day time frame within which the employee must file the wage-loss claim has been changed to 14 days to conform to the two-week pay cycle observed by most federal agencies and by OWCP. The longstanding practice that an employee may file a claim for permanent impairment (that is, for a schedule award) by letter if Form CA–7 has already been filed is specified in § 10.104.

Section 10.105 clarifies the circumstances under which a notice of recurrence (Form CA–2a) is required, rather than a new notice of injury (Form CA–1 or CA–2). The statement in (a) concerning the need to file a new notice of injury or episode of occupational disease is being added as a clarification that reflects current OWCP practice.

The statement in § 10.106 that the employer may file the claim on the survivor's behalf is new. It is added to encourage prompt filing of claims. The regulations also explain that the claim may be withdrawn before adjudication in order to conserve resources.

*Notices and Claims for Injury, Disease, and Death—Employer's Actions*

Proposed §10.110, which discusses the employer's responsibilities when a notice of traumatic injury or occupational disease has been received, shortens the time frame for submission of notices of injury and occupational disease from 10 to five work days, and the regulations now make clear that the employer should not wait for any supporting evidence before sending the form to OWCP. These changes reflect OWCP's increasing emphasis on early receipt of notices of injury and claims for compensation, which enables rapid initiation of adjudication and case management procedures, as well as payment of benefits, and an earlier return to work.

Proposed §10.111 discusses the employer's responsibilities when a claim for compensation due to disability or permanent impairment has been received. It also changes the time frames for submittal of a claim for initial disability when the employee is receiving continuation of pay. Similarly, a statement emphasizing that the employer should provide the employee with a Form CA–8 to claim continuing disability has been added to § 10.112. Both changes represent long-standing practice on the part of OWCP and most federal employers.

The statement that the employer may not charge for assisting survivors in filing claims, which is found in current §10.108, has been removed as unnecessary from §10.113, which discusses the employer's responsibilities when an employee dies from a work-related injury or disease.

*Evidence and Burden of Proof*

Section 10.115 describes, in a more comprehensive and specific manner than the existing regulations, the five basic requirements which have long been required of a claimant. It supplants the description in the existing § 10.110(a), which is more procedural and technical, and which contains information (such as what medical evidence is required) that is already in development letters and occupational disease checklists provided directly to the claimant. The need to submit supporting medical evidence when wage loss benefits are claimed is emphasized, as this requirement is not always clear to employees.

Section 10.116 includes a reference to OWCP's use of checklists to assist the claimant and employer in determining what information needs to be submitted for certain occupational disease cases. While these checklists have been in use for many years, and provide specific guidance on what information is required for different types of claims, they have not previously been mentioned in the regulations.

*Decisions on Entitlement to Benefits*

New §10.125 revises the language in existing §10.130 to include, in the list of authorities used to adjudicate claims, decisions of the Employees' Compensation Appeals Board interpreting the FECA itself. This statement is added to provide claimants and employers with a general idea of the precedents used in making determinations.

Sections 10.160–10.166 of the existing regulations authorize OWCP to appoint a representative and to supervise the management of the claimant's funds by the representative payee. Section 10.424 of the new regulations regarding representative payees provides that a representative payee will be appointed only in situations in which no court or administrative body authorized to do so has appointed a guardian or other party to manage the financial affairs of the claimant, since such an appointment constitutes sufficient authorization for payment of FECA benefits by OWCP to the party so appointed. Furthermore, OWCP no longer will attempt to supervise a representative payee's activities, but will instead rely upon appointment of a guardian under applicable state law and supervision in accordance with those procedures as necessary.

**Subpart C, Continuation of Pay**

This subpart covers the same material as current subpart C (§§10.200 through 10.209). The general rules found in current §10.201 have been rearranged and placed in different sections. The criteria for eligibility in current §10.201(a) are now found in § 10.205. Current §10.201(b) is now found at §10.215; current § 10.201(d) is now found at § 10.200; and current §§10.201(e) and (f) are now found at § 10.223.

*Eligibility for COP*

Sections 10.205 (d) and 10.207 address the time frames applicable for paying continuation of pay (COP) when there is a recurrence of injury. Under the current rule, COP is payable only when the disability begins within 90 days of the date of injury (see current §10.201). Similarly, when an injured employee returns to work but stops again, any remaining COP is payable for the additional time lost (see current §10.208(b)(3)). The proposed rules shorten the 90-day period to a 30-day period in both situations.

The 90-day period presently set forth in § 10.202(a) and (b) was initially adopted to ensure that injured workers (who filed claims for COP within 30 days) would receive the full 45 days of COP, while at the same time affording employers and OWCP sufficient time to develop and adjudicate claims. Such a grace period is no longer necessary since the employing agencies are referring Form CA–7s and CA–8s (claims for compensation) to OWCP in a timely manner and OWCP is adjudicating about 93 percent of these claims and, where appropriate, authorizing the payment of claims for disability compensation (CA–7s and CA–8s) within 14 days of receipt.

OWCP has focused on minimizing or eliminating lost work time entirely,

which requires early intervention in the case. When the employer pays COP, OWCP may not necessarily even know about lost work time. The artificial extension of the COP period under the 90-day rules makes it difficult to intervene in cases where lost time is continuing at the point when early intervention is crucial. It is no longer necessary to forego the opportunity for this early intervention to ensure that income is not disrupted. Indeed, since COP was first introduced, payment performance has improved measurably, and the time frames were reduced in 1987 from six months to the current 90 days. OWCP's early intervention efforts now support an additional reduction of the period to 30 days, which is the period chosen by Congress as the time frame within which the initial claim has to be filed.

*Calculation of COP*

Proposed §10.217 reworks material found in current § 10.201(b), which contains a lengthy discussion of when COP is payable. Among other things, the discussion addresses situations where an employee continues to work in a different position because he or she is unable to work in the job held on the date of injury. The existing rule has been re-written to remove excess verbiage and to make clear that COP is chargeable where the employee who continues to work, but in a different job, would otherwise incur a reduction in pay because of the injury, but for COP. There is no intention to change the substance of the current rule. Since the methods of computing pay differ among agencies, it is difficult to capture all the variables, so we invite comments particularly from agencies on whose practices these new rules could inadvertently have an unintended adverse effect.

*Controversion and Termination of COP*

Section 10.222(b) allows an employer to terminate COP when a preliminary notice of a disciplinary action issued before the injury becomes final or otherwise effective during the COP period. Current §10.201 states that the final written notice of termination of employment for cause must have been issued before the date of injury. The proposed change corrects an overly rigid rule and better reflects the disciplinary process itself. It simply ensures that the employee and the employer are put in the same position as that which would have existed but for the injury; the salary would not have continued because of the disciplinary action and therefore COP should not be paid.

**Subpart D, Medical and Related Benefits**

This subpart contains most of the information found in current subpart E (§§10.401 through 10.413), except that some of the material about medical reports and payments (§§10.410 through 10.413) has been moved to new subpart I. The definitions contained in current §10.400 have been shortened and moved to subpart A. This subpart also addresses the subjects of current §§10.104(a) and 10.305. Current §10.401(d), which addresses the status of federal health units, has been removed as superfluous. Current §10.406, which concerns dental benefits, has been removed entirely as dental care is just one of many specialized forms of treatment authorized under the FECA, and it presents no special issues which need to be addressed.

*Emergency Medical Care*

In §10.300, the statement that the employer need not issue a Form CA–16 more than one week after the occurrence of the claimed injury has been added. This statement reflects long-standing practice, consistent with a purpose behind the issuance of this form, which is designed to ensure that necessary immediate medical care is not hindered through uncertainty by the provider of who is responsible for payment. Section 10.301 addresses often-asked questions and reflects long-standing policy, by making clear that the physician designated on the CA–16 may refer a claimant for additional treatment and OWCP will pay the appropriate associated costs.

Section 10.303 is new and is intended to provide uniform guidance to employers who have questions about whether it is proper to use a Form CA–16 to authorize medical testing at OWCP expense when their employees experience an exposure to a workplace hazard. It has been a matter of longstanding practice for OWCP to discourage the use of Form CA–16 in this kind of situation and to remind employers that they may be under an obligation independent of the FECA to provide their employees with medical testing and/or other services. This regulation reflects this practice, as well as OWCP's policy regarding payment for preventive treatment.

*Medical Treatment and Related Issues*

In § 10.310, the references to cost-effectiveness with respect to appliances and supplies and to generic equivalents of prescribed medications are new. They reflect the need for OWCP to control costs wherever possible in the current medical environment. OWCP will not approve an elaborate appliance or service where a more basic one is suitable, and full reimbursement for the appliance or service may not be made without prior approval by OWCP.

OWCP receives many questions from employees and chiropractors concerning the parameters of chiropractic care, and § 10.311 provides more specific guidance. Two changes to current practice are made for administrative convenience: the definition of ''subluxation'' which appears in current § 10.400(e) has been moved to new § 10.5(aa), and a statement that OWCP will not necessarily require the x-ray or a report of the x-ray before adjudication has been added.

Section 10.312, which concerns the services of clinical psychologists, is also new. Treatment of FECA claimants by clinical psychologists has become much more common. Cases where a claimant exhibits or alleges both physiological and psychological conditions have presented problems concerning the proper scope of practice and the needs of OWCP for comprehensive medical reports addressing both conditions. Section 10.312 specifies that a clinical psychologist may treat a FECA claimant as a physician within the scope of practice allowed by applicable state law.

Section 10.313 has been added to address frequently asked questions concerning preventive measures. It reflects OWCP policy as stated in its internal procedures. What distinguishes situations where preventive treatment may be authorized from those where it may not be authorized is the presence of a verifiable work-related injury. Without such an injury, preventive treatment cannot be authorized.

*Attendants*

Section 10.314, which concerns the services of attendants, represents a significant departure from current practice. At present, an allowance may be paid directly to a claimant for the services of an attendant (limited by statute to a maximum of $1,500 per month). Because the payment is made directly to the claimant, OWCP has no opportunity to properly account for the expenditures, nor to monitor the quality of the services provided.

The payment is a tax-free augmentation of compensation, and as the proposed rule makes clear, the Director has determined that requests for this augmentation will no longer be considered. Individuals who have been awarded an attendant allowance before the effective date of the final rule, however, would continue to receive it as

long as the service is otherwise necessary. Although the augmentation payment will no longer be considered, and no new awards made, any necessary services will still be payable (up to $1500 per month) but by direct payments to the provider, as is generally the case for all other services.

There are several reasons for this change. Foremost among these is that it offers OWCP greater fiscal control and quality review, while continuing to ensure that any necessary personal care services will continue to be available to the claimant. First, augmentation itself is paid very rarely. The attendant services for which the supplemental income provided for under 5 U.S.C. 8111(a) is intended, is not often necessary without the concurrent need for medical services. Under these circumstances, the trained medical personnel necessary to perform the medical functions also take care of the personal care needs, and both are, and can continue to be paid for as a medical service.

Second, even when only personal care services are necessary, OWCP may pay for them directly under 5 U.S.C. 8103. The administrative resources expended in considering applications for this augmentation of compensation under section 8111(a) are excessive, and most are denied because there is no showing that the services are necessary. It is expected that fewer requests for these services will be received when the payments are made directly to the provider like almost all other services. Where the claimant can show that the services are necessary (by providing sufficient medical documentation), however, they will still be provided for.

Another reason for this change is that by paying the providers of such service, OWCP will gain both increased financial accountability and better quality control than now exists. Currently, the allowance is paid directly to the claimant resulting in OWCP having no effective administrative control; we are unable to determine whether the provider is charging too much for the services, for example, or even in some cases whether the allowance is actually being spent for the services. By paying for any necessary services directly, under section 8103, instead of providing an allowance to the claimant, under section 8111(a), these costs will be subject to the same administrative controls to which most other bills for services and supplies are subject. Bills will be submitted to OWCP directly by the provider; they will be subject through the OWCP fee schedule to a maximum monthly charge of $1,500; bills for services will be scrutinized to ensure the charges are correct; it will be OWCP, not the claimant, who will be responsible for resolving any problems with the payments; and a record of payments to the provider will be reported to the Internal Revenue Service on form 1099 at the end of each year.

In addition to financial accountability, the quality of services can better be monitored. Providing supplemental compensation to the injured employee under section 8111 has in many instances encouraged family members to take on the personal care services, even though they may not be trained or well-suited to this task. Paying the provider directly will give OWCP an added degree of review to ensure that the necessary services are being provided by a home health aide, licensed practical nurse or similarly trained individual better able to provide the care needed. Where a family member can show he or she has the appropriate qualifications and training, there will be nothing to prevent them from providing the service and receiving payment.

Section 10.316, which concerns an employee's request to change his or her primary treating physician, clarifies that an employee need not consult OWCP for approval when the physician initially selected refers the employee to a specialist appropriate to the nature of the injury. Examples of frequently-approved requests for a change of physician are also provided to illustrate the decision-making process.

*Directed Medical Examinations*

Sections 10.320 and 10.321 concern second opinion and referee examinations. A statement has been added to make clear that the claimant is not entitled to have anyone attend such examinations (except for a physician of his or her choice, at a second opinion examination) unless OWCP finds that exceptional circumstances, such as the need for having an interpreter for a hearing-impaired claimant, exist. This statement was added to address situations where representatives and other parties wished to sit in on examinations, even though this action can be disruptive. The statement that a case file may be sent for second opinion or referee review where an actual examination is not needed, or where the employee is deceased, reflects long-standing practice and is consistent with ECAB precedent on this issue.

In § 10.323, which addresses failure to report for or obstruction of a second opinion or referee examination, a sentence has been added providing that actions of an employee's representative will be considered the actions of the employee for the purposes of this section. This statement was added to address situations where representatives prevent or disrupt examinations, thereby hindering OWCP from obtaining information needed to adjudicate and manage claims and is consistent with ECAB precedent on this issue.

*Medical Reports*

In § 10.330, the list of contents for medical reports has been expanded to include the extent of disability and prognosis for recovery, as these items are especially useful in managing disability cases. Inclusion of these items reflects OWCP practice, and should help medical providers and employees provide OWCP the information it requires to reach a decision in the case.

To reduce confusion about submission of medical reports, the statement that use of form reports is not required has been added to § 10.331. Also, this section makes clear that reports must have signatures, although recognizing that many medical providers use signature stamps in lieu of actual signatures. OWCP reserves the right to request an original signature on any medical report. The use of Form CA–17 to obtain interim medical reports is expressly confined to employees with disabling traumatic injuries, as this form is not properly used with occupational disease cases.

**Subpart E, Compensation and Related Benefits**

This subpart contains most of the information found in current subpart D (§§ 10.300 through 10.324), and it addresses the subjects of current §§ 10.109, 10.126 through 10.128, and §§ 10.160 through 10.166. The very detailed guidance currently given with respect to the appointment and responsibilities of representative payees has been condensed into one paragraph, new § 10.424, as most of the current material is procedural rather than regulatory in nature.

No counterpart to current § 10.310, which provided for buy-back of annual or sick leave, is included in the new regulations. This process is not authorized or required by the FECA, nor is it controlled by OWCP. It is controlled by each employing agency, in accordance with its general rules regarding leave repurchase. The only relationship between those rules and FECA is the general prohibition against paying wage-loss compensation benefits for any specific period where leave has been used. OWCP needs to know, therefore, whether leave has been taken in order to determine whether

compensation is payable for the same period. By including a reference in the regulations to the repurchase of leave, however, OWCP has inadvertently given the impression that OWCP controls or supervises leave buy-back for injured workers, and disputes concerning leave buy-back have often been incorrectly submitted to OWCP for resolution. To avoid this confusion, the reference to leave buy-back has been removed. Individuals who wish to repurchase leave should consult with their employing agency. Compensation will not be paid where leave has been used. Once restoration of leave has been authorized, however, OWCP will entertain a claim for benefits for that period of time.

*Compensation for Disability and Impairment; Compensation for Death*

In § 10.400, which defines total disability, a statement explicitly recognizing OWCP's view that most employees will eventually return to work has been added. This statement represents long-standing policy as reflected in OWCP's case management procedures.

In § 10.404, which concerns payment of compensation for schedule impairment, a statement that OWCP uses the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as its frame of reference for calculating such awards has been added. OWCP has used this publication in calculating schedule awards for many years, and the ECAB has approved its use. Since the publication is periodically updated, OWCP generally uses the newest edition in effect at the time of the decision in calculating loss of use.

OWCP has received a number of petitions over the years to add various internal organs to the list of schedule members. We have considered each organ suggested and, after much deliberation, decided against any additions. This decision is consistent with most state workers' compensation systems, which generally do not provide schedule awards for internal organs.

In § 10.406 and § 10.411, which concern maximum and minimum rates of compensation, the word ''basic'' has been prefixed to ''monthly pay'' to indicate that locality adjustments are not included in determinations of maximum and minimum rates of compensation. Also, statements have been added to recognize that compensation paid due to an assault which occurred during an attempted or actual assassination of a federal official in the performance of duty is exempted from the maximum rates.

In § 10.413, the provisions of current § 10.109 have been shortened so as not to repeat those appearing in the FECA itself.

In § 10.417, the second and third paragraphs provide that OWCP may, at least twice each year, request reports to verify student status or the inability of a child over 18 years of age to support himself or herself. This reporting schedule is consistent with most school enrollment schedules, and helps avoid situations where overpayments occur, by reminding recipients that individuals over the age of 18 who are not enrolled in school for any particular semester are not eligible for survivor benefits.

*Adjustments to Compensation*

Section 10.421(c) is new and reflects long-standing practice regarding the concurrent receipt of compensation from OWCP and severance or separation pay from the employer. With the increasing use of such benefits as the government downsizes, the frequency with which this is an issue has increased, and so a provision addressing this issue was included in the regulation. This provision is consistent with ECAB precedent on this issue.

Section 10.421(d) is also new and implements the changes made to the FECA when the Federal Employees' Retirement System (FERS) was instituted. Federal employees whose retirement benefits are provided by the FERS receive benefits under the Social Security (SSA) retirement system as part of their package of retirement benefits. Federal employees eligible to receive retirement benefits under the Civil Service Retirement Act (CSRA) must elect between FECA benefits and CSRS retirement benefits and cannot receive both at the same time. With the enactment of the FERS, Congress amended the dual benefit provisions of the FECA (section 8116(d)). A FECA beneficiary may receive FECA benefits and SSA benefits, except that OWCP is required to reduce FECA benefits by the amount of any SSA retirement benefits attributable to the individual's Federal employment.

In § 10.423, which concerns assignment of compensation payments to creditors, a statement concerning garnishment of benefits for alimony and child support has been added. The language reflects changes to various federal laws, making clear that FECA as well as other Federal benefits may be attached to fulfill alimony and child support obligations.

*Overpayments*

The regulations concerning overpayments have been extensively re-written to highlight and clarify a FECA beneficiary's obligation to be aware of the period for which benefits are paid, and the manner in which overpayments are declared, contested, and collected.

The language in § 10.430 has been added to describe how OWCP notifies a recipient of compensation that a payment has been made, whether by paper check or electronically. This language was added to clarify that a recipient is required to be aware of the time period for which each payment of compensation for wage loss or schedule award is received and to advise OWCP of any discrepancies noted. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

Sections 10.436 and 10.437 discuss the two circumstances under which an overpayment can be waived pursuant to section 8129(b). Section 10.436 discusses the criteria to be used in determining whether recovery would ''defeat the purpose'' of the FECA. Section 10.437 discusses the criteria to be used in determining whether recovery would ''be against equity and good conscience.'' Waiver under § 10.436 because recovery would defeat the purposes of FECA is available only to currently or formerly entitled beneficiaries, which continues the application of that provision in the existing regulations. In § 10.437, the manner in which OWCP applies the ''against equity and good conscience'' test for waiver of an overpayment is revised to provide that this particular test applies to all individuals who are ''without fault'' and have received compensation because of an error of fact or law, regardless of whether or not they are present or former beneficiaries under the Act. This change restores the statutory distinction between the application of the two tests for waiver contained in section 8129(b), which was unintentionally removed as a result of the 1987 revision of the regulations.

In new section 10.441, language has been added to clarify that an overpayment is a debt that is subject to the Debt Collection Act of 1982 and that if such a debt is not repaid OWCP will attempt to recover the debt by any available means including offset of salary, annuity benefits or referral for collection to a collection agency or to the Department of Justice.

**Subpart F, Continuing Entitlement to Benefits**

This subpart contains most of the information found in current §§ 10.123 through 10.128. It also includes some

material from current §§ 10.107 and 10.110.

*Claims for Continuing Disability*

The regulation concerning continuing receipt of compensation benefits, new § 10.500, has been written to include a specific statement that OWCP's goal is to return each disabled employee to work as soon as medically able. The definition of ''suitable work'' has also been revised to clarify the criteria by which it is determined that work is ''suitable''. These changes were made because these concepts are important to the program and important for both employees and employers to understand.

The language in § 10.500(a) has been added to inform claimants, employing agencies and others of OWCP's long-standing practice of requiring claimants to periodically submit medical evidence in support of continuing disability. It also includes a description, based on a consistent line of ECAB precedent, of the type of medical evidence necessary to support a claim for continuing compensation.

The language in new § 10.500(b) has been added to clarify that OWCP can require non-invasive testing and functional capacity evaluations and that failure to undergo such testing may result in suspension of benefits.

The discussion of weighing medical evidence in § 10.500(c) has been added to describe OWCP's long-standing method of evaluating medical evidence. It explains that the conclusions reached in medical reports are not necessarily accepted at face value. Instead, OWCP considers the entire report and determines the weight to be accorded it based on a number of factors, including the extent to which the report shows a familiarity with the history of the case, whether it contains objective findings (as opposed, for example, to unsubstantiated complaints), and the strength of the reasoning supporting any opinion rendered.

*Return to Work—Employer's Responsibilities*

The discussion of an employer's responsibilities to return an employee to work in § 10.505 has been revised to specifically reference the provisions of section 8151, which grants reinstatement rights to injured employees and requires employers to take steps to reemploy them. Language has also been added to inform employees, employers and others that the Office of Personnel Management (not OWCP) administers this provision. In the past, employees and former employees have sought OWCP intervention in disputes concerning reemployment rights based upon the mistaken belief that OWCP had jurisdiction over such matters and authority over agency decisions concerning employment decisions. This provision of the regulations is being added to correct that misunderstanding of OWCP's role in regard to reemployment.

Section 10.506 includes a new provision allowing employers to contact employees at reasonable intervals to request periodic medical reports addressing their ability to return to work. This statement is consistent with OWCP's case management procedures, which are designed to include the employing agency in the effort to return the injured employee to work. The provision is not intended to allow employers to obtain medical reports for any reason other than evaluation of an employee's ability to return to work.

The discussion of payment of relocation expenses, in § 10.508, has been revised to include a provision that OWCP may pay relocation expenses when the new employer is other than a federal employer, a situation which the current § 10.123(f) does not address. Requests for reimbursement in this context do not arise frequently, and the expenses claimed are usually modest.

Section 10.509 adds a discussion, not contained in the current regulations, of OWCP's practice with respect to injured employees who have returned to light-duty work and are separated when their employers eliminate their light-duty positions in a subsequent reduction-in-force (RIF) as part of a general agency downsizing at a particular work site. Consistent with established ECAB precedent, OWCP does not consider such a termination of employment to be a recurrence of employment-related disability, since it is not caused by a change in the nature or extent of the employee's accepted medical condition or a change in the duties of the light-duty position, which clearly would have continued to be available in the absence of the RIF.

In such cases, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in the former light-duty position, if such a determination is appropriate and has not already been made. Unless the employee has been working in a position for which the employer has prepared a written position description, OWCP will assume that the employee was engaged in non-competitive employment that does not represent the employee's wage-earning capacity. This requirement is consistent with ECAB precedent concerning wage-earning capacity determinations, which provides that OWCP may not use an unclassified or ''odd-lot'' position that has been specifically tailored to fit the work limitations of a particular injured employee to determine the wage-earning capacity of that employee.

*Return to Work—Employee's Responsibilities*

Section 10.516 incorporates into the regulations the procedures followed when OWCP rejects an employee's reasons for refusing a position that OWCP has found suitable. OWCP adopted these procedures several years ago in accordance with the decision of the ECAB in *Maggie Moore*, 42 ECAB 484 (1991). The proposed regulation provides for a 15-day period during which an employee may accept the offered job without penalty after OWCP has determined that his or her proffered reasons for declining to accept an offer of suitable work are not reasonable.

Section 10.518 adds a discussion of ''vocational rehabilitation services'' to the regulations. This definition is intended to clarify that such services include the services of registered nurses working at the direction of OWCP to assist employees in returning to work. These nursing services, which generally take place in the weeks immediately following the injury, are an integral part of OWCP's efforts to return injured employees to work. Vocational rehabilitation includes a variety of services, all of which are designed to assist an injured employee's return to work. Including this definition of vocational rehabilitation services clarifies that OWCP considers nursing services to be such services and that the benefits and sanctions set forth in section 8104 and section 8113(b), which apply to other vocational services, will also apply to nurse services. This discussion also states that OWCP considers vocational evaluation, testing, training and placement services, and functional capacity evaluations to be vocational rehabilitation services.

Section 10.520 incorporates into the regulations an explanation of how OWCP determines an employee's wage-earning capacity after completion of a vocational rehabilitation program. This discussion is intended to inform employees and others of OWCP's long-standing practice in this area and is consistent with ECAB precedent concerning determination of wage-earning capacity.

*Reports of Earnings From Employment and Self-Employment*

The FECA authorizes OWCP to require FECA claimants to report

earnings from employment or self-employment. The ''earnings'' from employment or self-employment that must be reported by any employee who is receiving compensation for either partial or total disability are defined in § 10.5(g). The language in § 10.525(b) has been added to clarify the distinction between the effects of having earnings, which may or may not result in a reduction of FECA compensation, and the effects of failing to report earnings, which can result in the forfeiture of all compensation paid or found to be payable during the reporting period.

The discussion of volunteer activity in § 10.526 has been added to clarify that employees receiving compensation for partial or total disability are required to report volunteer activity as part of their report of earnings from employment and self-employment. Volunteer service can be a valuable indicator of the kind of gainful employment that the employee may be able to undertake, and thus OWCP may be able to use this information to help determine the employee's wage-earning capacity.

The language in § 10.527 has been added to the regulations to inform employees and others of the fact that OWCP attempts to verify reports of earnings in a number of ways, including computer matches with the Office of Personnel Management and state workers' compensation agencies.

*Reduction and Termination of Compensation*

Sections 10.540 and 10.541 are new and reflect OWCP's long-standing practices with respect to how and under what circumstances it will provide beneficiaries with written notice that it intends to either reduce or terminate their compensation in the next 30 days, as well as the administrative steps it will take after it provides such notice. These provisions are to inform employees and others when and how OWCP notifies beneficiaries of its intention to terminate compensation and to clarify that, in situations when the beneficiary has no reasonable expectation that compensation will continue, OWCP will not provide this pre-termination notice.

**Subpart G, Disallowances and Appeals**

This subpart contains most of the information found in current §§ 10.130 through 10.145, except for the material found in current § 10.142, which is moved to subpart H.

*Reconsiderations and Reviews by the Director*

Review of a decision on application of the claimant is addressed in current § 10.138(b), and review of a decision on the Director's own motion is addressed in current § 10.138(a). Sections 10.605 through 10.610 revise and expand the description of reviewing a decision on application of the claimant and on the Director's own motion in order to clarify the difference between these two separate procedures. These provisions state that the Director's authority is not subject to a request or application. Further, these provisions adopt OWCP's long-standing position that the Director does not need new evidence or argument to review a decision and that the decision by the Director to review a decision is not a proper subject for review or appeal.

In many cases, claimants appear not to have understood the distinction between the two distinct review procedures authorized by section 8128(a). Some individuals, who remain dissatisfied with an OWCP decision after exhausting all their review and appeal rights, have asked the Director to review the decision with which they disagree pursuant to the Secretary's authority under section 8128(a), delegated to the Director, to review a decision on his or her own motion. The distinction between the Director's authority to review a decision on his or her own motion and a claimant's application for review is not new in practice. Claimants have never been entitled to ''apply'' for review outside the process described as a ''reconsideration'' in the review and appeal options accompanying all adverse decisions. When a request to the Director to review a decision on his or her own motion is received, it has been OWCP's long-standing practice to treat it as a reconsideration request rather than an additional avenue for claimants to seek review.

To alleviate the confusion that has been demonstrated in regard to this issue, § 10.610 specifically states that OWCP will not consider a request for review on the Director's own motion. The statutory provision authorizing a claimant to request review of a decision ''upon application'' is fulfilled by the application for reconsideration. Since no other mechanism for a claimant dissatisfied with a decision to obtain a review ''upon application'' is available, OWCP will continue to treat requests that the Director review a decision on his or her own motion as requests for reconsideration.

A number of ECAB cases have addressed the question of whether the Director is required to have new evidence or argument to review a decision under section 8128(a). In Eli Jacobs, 32 ECAB 1147 (1981), the ECAB held that the Director may reopen a claim at any time without specifying what standard, if any, applied to that decision. In a later decision, Daniel E. Phillips, 40 ECAB 1111, petition for reconsideration denied, 41 ECAB 201 (1989), however, over the dissent of one member of the panel, the ECAB held that to reopen and rescind acceptance of a claim, the Director must establish that the original decision was erroneous through the use of ''new or different evidence.'' The ECAB reached this conclusion without specifying any statutory or regulatory basis for this limitation. Its only rationale was its opinion that reopening a decision should not become a surreptitious route for OWCP to readjudicate a claim. In later cases that formulation was expanded to include allowing reopening and rescission of a prior decision through new or different evidence, legal argument or rationale. See, e.g., Beth A. Quimby, 41 ECAB 683 (1990); Billie C. Rae, 43 ECAB 192 (1991); Shelby J. Rycroft, 44 ECAB 795 (1993); Laura H. Hoexter (Nicholas P. Hoexter), 44 ECAB 987 (1993).

Section 10.610 adopts the long-standing position of the Director that the plain language of section 8128(a) authorizes the Director, without pre-condition, to review a decision ''at any time.'' The existing regulations contain a provision, carried over in § 10.608, limiting the right of a claimant to obtain a merit review and a new decision from OWCP to those situations in which the claimant meets one of the requirements set out in § 10.138(b). Without this limitation, the effective administration of the program could be undermined by taxing the limited resources available to administer the program through frivolous requests for review. Allowing the claimant to reopen the claim just to have the same evidence reviewed again would both waste the claims staff time and slow down the appellate process.

In view of the fact that the statute imposes no limitation upon the right of the Director to review a decision ''at any time,'' § 10.610 grants the Director an unconditional right to review any decision without requiring new evidence or argument. Effective administration of the program requires that the Director be able to review decisions at any time without having to supply new evidence or argument.

This does not mean, however, that the claimant has no recourse when the

Director reviews a decision and issues a new decision with which he or she disagrees. Any adverse decision is subject to the full range of review and appeal options which protects the claimant from arbitrary action. Congress clearly did not contemplate restricting the Director's ability to reopen a claim when it gave the Director authority to review a decision ''at any time''.

Consistent with this broad authority, § 10.610 provides that the determination whether or not to review a decision on his or her own motion is not subject to reconsideration, review or appeal. Since the Director has unfettered discretion in deciding whether or not to review a decision, and any claimant unhappy with a new decision issued after such a review by the Director is provided the same rights to seek reconsideration, review or appeal associated with any OWCP decision, no purpose would be served by allowing further review of the Director's decision to review a previous decision.

*Hearings*

In § 10.615 a provision has been added granting hearing representatives discretion to conduct an oral hearing by telephone or teleconference. Section 10.616(b) revises the time period in which a claimant can request a change in the format of a hearing. A request received by the Branch of Hearings and Review before the date OWCP issues a notice that the record is closed for written review, or has set a date for an oral hearing, will be granted. Later requests will be subject to OWCP's discretion.

Section 10.617(g) makes clear that the hearing representative may terminate a hearing at any time that he or she deems the actions of the claimant and his or her representative to be disruptive. This provision reflects current practice.

The discussion of issuing subpoenas, § 10.619, has been revised to set forth the criteria for issuing a subpoena. To alleviate confusion that has been demonstrated concerning the circumstances under which subpoenas can be issued, § 10.619(a) specifically provides, consistent with practice based upon ECAB precedent, that subpoenas will be issued at the request of a claimant only in connection with hearings. Moreover, it makes clear that this method of gathering evidence is to be used as a last resort. Because the hearing is an informal procedure, not bound by rules of evidence or formal rules of procedure, the need for subpoenas is limited and is sufficiently accommodated by providing that a subpoena can be issued for documents when the information is not available by other means and for witnesses when oral testimony is the best way to ascertain the facts. To avoid disruptions of the hearing process and encourage early and active development of the evidence, § 10.619(a)(1) provides that a subpoena must be requested within 60 days after the date of the original hearing request.

To clarify the role of a representative of the employer at a hearing, the discussion of this subject, in § 10.621(b), has been revised to specifically note that a hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot establish that such testimony would be relevant or because the representative does not have the appropriate level of knowledge.

Section 10.622 revises the rules concerning postponement of oral hearings to address problems that have arisen since the institution of the current rules concerning postponements in 1987. Oral hearings are scheduled at locations within a reasonable proximity to claimants' places of residence. As a result, hearings are scheduled throughout the country, several times a year in some locations and only once a year in other locations. For each trip, one hearing representative is assigned a number of cases as the ''docket''. Before the trip, the hearing representative must review each file, research the issues, and prepare the record, all of which requires many hours of work.

Scheduling and workload constraints prevent OWCP from sending the same hearing representative to the same city each time. Thus, when a hearing is postponed, it often requires that another hearing representative repeat the preparation for the hearing undertaken by the previous representative. Furthermore, in many cases it is too late to schedule another case for that slot on the docket, thus needlessly delaying hearings for other claimants.

The current rule, found at § 10.137, which allows a postponement for ''good cause'' if the request is received at least three days prior to the date of the hearing, has proven completely ineffective at controlling the waste of resources caused by postponements. Disputes over what constitutes ''good cause'' sometimes take longer and require more resources than rescheduling the hearing itself. The result is delay, not only for the claimant whose hearing was scheduled and postponed, but for other claimants adversely affected by the inefficiency of the current process.

Thus, new procedures are being adopted which provide that, once the oral hearing is scheduled, it cannot be postponed unless the hearing can be rescheduled on that same trip. In the event that an oral hearing cannot be rescheduled on that same trip, the claimant will be provided a review of the written record instead. The proposed limitation is a reasonable compromise which will improve the administration of the program. The program's resources must be preserved to ensure the best service to all those seeking a hearing. Constant and repeated postponement of oral hearings constitute a serious drain on those resources. The review of the written record by a hearing representative as a substitute for an oral hearing has served as an effective way to provide the review contemplated by the FECA on a more timely basis than resources otherwise would permit.

In most cases, the issues relate to written evidence (particularly medical evidence). A face-to-face hearing does little to clarify medical issues, since the determination, in most cases, must be made on the basis of written medical evidence in the file. A review of the written record has been selected, therefore, as an effective way to provide the review of the decision by a hearing representative where the claimant must postpone the hearing.

Another change to the oral hearing procedure is to allow a claimant to express a preference for scheduling an oral hearing. OWCP will attempt to comply with any scheduling preferences of which it is advised at the time of the original request. Once the notice of hearing is sent, the claimant can request a change in the day and the time of the hearing within the same docket.

*Review by the Employees' Compensation Appeals Board (ECAB)*

Claims on appeal often have continuing issues, such as payments of bills or actions on collateral issues such as recurrences, requiring actions by OWCP. Sometimes, because the case is under the jurisdiction of the ECAB, there are questions as to what can and cannot be done by OWCP when cases are before the ECAB. To clarify this issue, language has been added to the regulations, in § 10.626, which explains the circumstances under which OWCP still has jurisdiction over issues in cases pending before the ECAB.

**Subpart H, Specialized Topics**

This subpart contains most of the information found in current subparts G and H (§§ 10.500 through 10.624), as well as the material found in § 10.142.

*Representation*

Current § 10.143 states, with no elaboration, that a claimant may authorize any individual as a representative in a claim before OWCP. Section 10.700 more fully describes who may act as a representative, what authority a representative has, and specifies that there can be only one representative in a claim at a time. These provisions essentially incorporate current practice.

The FECA gives to the Director, as the Secretary's delegate, the authority to approve fees associated with representation of a claim under the FECA. In the past, OWCP claims personnel have reviewed all bills for representatives' services, even if the claimant did not disagree with the amount billed. To reduce the workload imposed by extensive review of bills with which claimants do not disagree, § 10.702 implements a new procedure by which OWCP would automatically approve all fees unless the represented party objects to the amount billed. In that case, OWCP will give that party an opportunity to submit further information. OWCP will then adjudicate the request according to the criteria set forth in § 10.703(c). This section adopts the criteria in the existing regulations at § 10.145(b), after removing items that are essentially duplicative.

*Third-Party Liability*

Current § 10.501 through § 10.507 essentially restate provisions of sections 8131 and 8132 of the FECA. Much of that material has, therefore, been removed as redundant. Sections 10.704 to 10.719 explain, interpret and clarify duties of FECA claimants and their counsel pursuant to sections 8131 and 8132 of the FECA. Section 10.705(b) incorporates into the regulations a specific reference to the fact that the Office of the Solicitor (SOL) administers the subrogation aspects of certain FECA claims for OWCP. (This does not, however, preclude an employing agency from participating in administering the subrogation aspect of its employees' cases under a specific agreement with OWCP.) Section 10.706 explains how a FECA beneficiary is informed of the obligation to pursue a claim against a third party. Section 10.707 provides a list of all actions that must be taken by a FECA beneficiary in order to comply with the requirement in section 8131 of the FECA that a claimant prosecute an action against a third party when required to do so by OWCP. The purpose of this section is to inform claimants that failure to comply with any of the requirements in this section could result in forfeiture of all FECA benefits arising out of the injury at issue. Section 10.708 further details the penalties that can be applied to a FECA beneficiary who fails to prosecute a claim or to assign it to the United States when requested to do so by indicating that OWCP may order forfeiture of such benefits or alternatively could suspend such benefits until the request to assign or prosecute is complied with. In many instances, review of the information available to OWCP indicates that there is a possibility of third party liability, which, upon further investigation by private counsel consulted by the FECA beneficiaries, is either not economical to pursue or simply not meritorious. Section 10.709 sets forth the procedure to be followed by a FECA beneficiary to be released from the obligation to prosecute an action against a third party.

Section 10.710 is being added to the regulations to clarify that any person who has filed a FECA claim that has been accepted or who has received FECA benefits in connection with a claim filed by another person must report any receipt of money or other property as a result of the liability arising out of that injury to OWCP or SOL within 30 days of receipt. Section 10.711 is being added to the regulations in order to provide a step by step explanation of the calculation of the refund to be paid to the United States and any credit against future benefits calculated in accordance with the formula contained in section 8132 of the FECA. The only change contemplated from existing practice by this formula is elimination of the opportunity to offset payment of medical expenses to federal facilities or other parties from any recovery. This practice has been allowed as an administrative accommodation, but rarely occurs and is no longer considered necessary. Any medical expenses paid directly by the FECA beneficiary should be submitted directly to OWCP for reimbursement as appropriate.

Section 10.712 incorporates into the regulations OWCP's longstanding practices in regard to what amounts are included in the gross recovery reported in connection with third party liability for an injury covered by the FECA. Section 10.713 is being incorporated into the regulations to require that a FECA beneficiary who receives a structured settlement (one which provides for payment of funds over a specified period of time rather than immediately) report as the gross recovery the present value of the right to receive all of the payments called for in the settlement. This requirement is in keeping with the plain language of section 8132 of the FECA, which covers the receipt of ''money or other property'' and the recognition that the right to receive a stream of payments in the future is clearly a valuable property right. This definition is intended to overrule the holding of the ECAB in Benjamin S. Purser, Jr., 42 ECAB 204 (1990).

Section 10.714 sets forth the manner in which OWCP calculates disbursements which it makes in connection with a FECA claim to be refunded in accordance with the formula set out in section 8132 and § 10.711 of these regulations. The only change from existing practice is to allow for subtraction from the total of refundable disbursements of the cost of any medical examination that the FECA beneficiary establishes that the employing agency should have made available at no charge to the employee under a statute other than the FECA. This change is being made to ensure that employees who sustain injuries covered by the FECA are not treated less favorably than those who receive such treatment but have not sustained injuries covered by the FECA.

OWCP has decided to impose interest charges on refunds due to the United States pursuant to section 8132 of the FECA as set forth in § 10.715. This is a change in current policy and is consistent with the Debt Collection Act of 1982. In view of the fact that certain FECA beneficiaries currently receiving compensation payments owe refunds and have refused to pay, a provision is being added to the regulations at § 10.716 allowing collection of such refund by withholding from payments currently payable under FECA. Section 10.717 is being added to the regulations to clarify OWCP's longstanding interpretation that, since an injury caused by medical malpractice in treating a FECA-covered injury is itself an injury covered by FECA, any recovery received in a negligence suit arising out of such malpractice is a recovery subject to section 8132 of the FECA. Similarly, § 10.718 is being added to the regulations to make clear another longstanding OWCP interpretation: that insurance payments to a beneficiary pursuant to a policy the beneficiary has purchased do not constitute a recovery pursuant to section 8132.

Section 10.719 is being added to the regulations to interpret the phrase ''same injury'' for the purposes of implementing section 8132 of the FECA. While an argument can be made that the statute intended that each recovery for a medical condition or wound should be

treated separately for the purpose of calculating any required refund or credit against future benefits (an argument which has been accepted by one district court, in *Benjamin S. Purser, Jr.* v. *United States Department of Labor*, 943 F.Supp. 898 (M.D. Tenn. 1996), the approach being adopted by these regulations is more consistent with the intent of section 8132 and the administration of the FECA. Attempting to separate out each different ''injury'' incurred in, for example, an automobile accident as a result of which an injured employee may have multiple medical conditions affecting numerous body parts in order to allocate a single settlement from the other driver into pieces appears to be an artificial exercise that serves no purpose set forth by the statute. Such an interpretation invites artful drafting of settlement agreements designed to negate the intended effect of the statute to, in part, shift the costs of FECA onto parties who have caused injuries covered under the FECA. Since each claim for FECA benefits arising out of a single incident is administered as one file, regardless of the number of wounds or medical conditions involved, attempting to separately account for the recovery attributable to each wound and to offset any credit against future benefits only to medical payments attributable to that wound would be nearly impossible, except in the most arbitrary manner and even then would be time-consuming, cumbersome and a source of immense delay and confusion.

*Federal Grand and Petit Jurors*

Current § 10.620 on the definition of jurors has been moved to the list of definitions at § 10.5(h), while current § 10.621 on the applicability of the other subparts of the regulations has been removed as unnecessary.

*Peace Corps Volunteers*

Current § 10.600 on the definition of Peace Corps volunteers, § 10.601 on the applicability of the FECA, § 10.602 on when disability compensation commences, § 10.603(a) through (c) on special pay rate considerations, and § 10.604 on the period of service of volunteers essentially restated provisions of the FECA and other relevant statutes and have therefore been removed as redundant.

*Non-Federal Law Enforcement Officers*

Current § 10.612(d) on the eligibility of non-federal law enforcement officers, § 10.617(c) on the adjudication of these claims, § 10.618 regarding consultation with the Attorney General and other agencies, and § 10.619 on cooperation with state and local agencies essentially restated provisions of the FECA and have therefore been removed as redundant.

Subsections (a) and (c) of § 10.735 combine current §§ 10.611 and 10.612, which have been rewritten to accommodate the question and answer format and to delete material that simply restated provisions of the FECA, without any attempt to make a substantive change. Subsection (b) is new and restates other parts of the FECA for use as a general rule. The last sentence of subsection (b) reflects OWCP's longstanding practice with respect to the issue of coverage under this subpart for individuals who only perform administrative functions in support of eligible officers.

The last sentence of § 10.736 is new and reflects a recent ECAB decision which construed the time limitation provision of 5 U.S.C. 8193(c)(3).

Section 10.738 has been rewritten with minor changes throughout to address a growing body of ECAB precedent regarding the nature and extent of coverage for officers who are injured in situations that involve potential federal crimes (as distinguished from actual crimes that have resulted in a criminal prosecution).

Section 10.739 is new and describes the type of objective evidence necessary to establish the existence of a potential federal crime for purposes of coverage consistent with several ECAB decisions on this point. An enumeration of the various methods for making this type of showing is necessary to assist OWCP in its adjudication of a growing number of these sorts of claims.

Section 10.741 is new and substantially rewrites the existing regulation at § 10.616 to reflect longstanding administrative practices regarding the interpretation of what constitutes ''comparable'' benefits consistent with ECAB precedent. Section 10.741(c) is added to the regulations to explain how these benefits are calculated in certain circumstances where the officer contributes to the fund which is the source of the benefit. These provisions are needed to provide OWCP with guidance in adjudicating these matters, which have generated a number of inquiries from officers and their representatives. This interpretation is consistent with OWCP's current practice in calculating how much of the eligible officer's FECA benefit must be offset as a result of the receipt of comparable benefits.

**Subpart I, Information for Medical Providers**

This subpart is designed to gather in one section all of the information needed by medical providers. It combines some of current §§ 10.410 through 10.413 with §§ 10.450 through 10.457.

It also contains proposed revisions in the rules establishing procedures for submission and reimbursement of inpatient hospital services and pharmaceutical bills under the FECA. These revisions would supplement rules in effect since 1986, which provide for a fee schedule for reimbursement of medical procedures and services. This fee schedule currently applies to all physician services as defined under the FECA, and to outpatient professional services.

*Medical Bills*

In § 10.801, references to National Drug Codes and Revenue Center Codes have been added to the list of codes which the medical provider must specify. References to UB–82 have been changed to UB–92, as the latter has become the standard billing form for hospitals. A statement that pharmacy bills are to be submitted on the Universal Claim Form has also been added.

*Medical Fee Schedule*

Sections 10.809 and 10.810 are new. OWCP believes that expanding its ability to control and monitor medical costs is a critical element in ongoing efforts to enhance the management of injuries under FECA. Under these rules, both pharmacy bills and inpatient hospital bills will be subject to cost containment methods.

Under the FECA, OWCP authorizes payment for medical services and establishes limits for fees for such services (March 10, 1986, 51 FR 8276–82, as amended). Since 1994, the schedule for payment of professional services has been based on the relative value units (RVU's) devised by the Department of Health and Human Services, Health Care Financing Administration (HCFA). When appropriate for the schedule, OWCP devises its own RVU's for procedures not covered under the HCFA schedule, for procedures without an assigned RVU under the HCFA schedule, for services HCFA covers under other schedules, and for services unique to OWCP, such as second opinion and impartial medical evaluations. In addition, OWCP devises its own conversion factors to meet program needs.

The Department recognizes the worth of using a schedule to reimburse

covered medical services in that it provides an equitable method to implement cost control measures, and it enhances the ability to manage injury claims, especially the appropriateness of the medical services provided and their relatedness to the compensable injury. These same principles underlie the extension of cost controls to pharmacy and hospital bills.

**Pharmacy bills:** At present, pharmacy payments, which constitute nearly 6% of the total medical outlays of the program, are not controlled by the fee schedule. These rules would reimburse pharmacies under a set schedule. To standardize payments for medicinal drugs, the program has devised a fee schedule based on the Average Wholesale Price (AWP) of each individual drug plus a dispensing fee established by the Director. AWP prices will be obtained from a file provided by a nationally recognized vendor containing medicinal drugs listed by their unique National Drug Codes (NDCs). AWP prices will be updated on a regular basis.

The AWP is set by the industry, and represents what pharmacies are expected to pay for the drug. The dispensing fee will be twenty percent of the cost of the drug up to a maximum of $12.50. Thus, if the AWP of a drug is $20.00, there would be a dispensing fee of $4.00, and the maximum allowable charge for the drug would be $24.00. If the AWP of the drug was $500.00, however, the dispensing fee would be limited to $12.50, and the maximum allowable charge would be $512.50.

The basic methodology is widely practiced. In all, 23 state workers' compensation programs have some form of control over drug costs through the use of a maximum allowable schedule; 17 of these states have a set schedule for prescription drugs and six more have reimbursement formulas based on average wholesale price similar to that proposed for the FECA program or comparable data. OWCP's Division of Coal Mine Workers' Compensation uses this formula for reimbursement of drugs under the Black Lung Benefits Act.

**Hospital bills:** Proposed § 10.810 concerns hospital bills. Currently, only hospital outpatient services are subject to a fee schedule. The OWCP now proposes to reimburse hospital inpatient services under a prospective payment system (PPS) that is based on the systems used by the Health Care Financing Administration's Medicare program (42 CFR parts 412 et al).

The OWCP now proposes to use the HCFA prospective payment system (PPS) using Diagnostic Related Groups (DRGs) (42 CFR part 412, et al.) as the foundation of a PPS for determining the allowable reimbursement for inpatient services covered under FECA. OWCP has already successfully converted the foundation of its professional medical fee schedule to the HCFA RVUs, and the use of the HCFA PPS will establish a common base for payment of medical services under both agencies. OWCP's proposal to use the HCFA PPS is compatible with hospital inpatient cost control measures used by other federal agencies such as the Department of Veterans Affairs (VA) and the Department of Defense, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), who are also using DRG-based reimbursement systems. In addition, several state workers' compensation programs are using DRG-based systems to control the cost of inpatient services for work-related injuries.

The HCFA PPS is based on the premise that similar medical conditions and surgeries require similar inpatient services and resources, and that those conditions and surgeries can be categorized into DRGs according to the primary diagnoses and major surgical procedures performed, as coded under the International Classification of Diseases, 9th Revision (ICD–9–CM). Under the HCFA PPS, hospitals receive a fixed, predetermined reimbursement for each beneficiary's inpatient stay according to the assigned DRG and whether or not the length of stay is considered to be an outlier (the number of inpatient days is not within the nationally calculated range for the assigned DRG).

Under the HCFA PPS, the reimbursement rate is hospital-specific and is determined through a complex formula that considers national average costs for all inpatient services, geographic wage and overhead indices, medical education costs, patient mix, indigent care costs, and capital investments. The HHS PPS DRG rates are updated each year and are described in detail in the **Federal Register** (42 CFR part 412, et al.)

OWCP's decision to use the HCFA PPS as the foundation of its reimbursement system is based on research that explored available options, and on a study of FECA inpatient bills. OWCP reviewed a representative sample of inpatient services reimbursed under FECA, assigned DRGs in accordance with the HCFA DRG grouper rules, and used the HCFA pricer program to determine allowable amounts under Medicare.

In the study, fourteen DRGs accounted for 61% of the dollars billed and 64% of the inpatient stays. A wide range of diagnostic conditions and medical procedures were represented in the study, nevertheless, and they comprised a diverse list of DRGs. It is evident from the study analyses that there is considerable variation in the amounts different hospitals bill FECA for similar services. These billed amounts are greater by a mean of 45% than the amounts that would be allowed if the inpatient stay were paid under the HCFA PPS.

In instances of musculoskeletal soft tissue injuries, however, the OWCP study indicated that the injured worker under FECA may at times require a very short stay compared to that common for a patient under HCFA's Medicare program. For that reason, the billed amounts under FECA were in some cases actually less than that allowed under the HCFA PPS for the same DRG. Short inpatient stays, however, are not uncommon for work-related injuries and often are considered appropriate for post-trauma observation and for diagnostic procedures. Services at psychiatric and rehabilitation hospitals were excluded from this portion of the analysis because they are not currently subject to the HHS PPS for acute care.

Although there are differences in the medical conditions treated under the HCFA and the FECA beneficiary populations, the study indicated that the HCFA PPS using DRGs is well-suited to OWCP's efforts to expand its ability to monitor and control inpatient costs covered under FECA. Other federal agencies have reached similar conclusions, such as CHAMPUS (32 CFR part 199) and the VA (38 CFR 17.55).

HCFA currently collects comprehensive hospital-specific fiscal data, and has considerable experience in this regard. They have been paying for inpatient services under a PPS since October 1983. OWCP does not have the resources to collect such data now or in the foreseeable future. In addition, the Department believes that duplicate collection of data is not an efficient use of staff and resources.

It is proposed, therefore, that OWCP base reimbursement of inpatient services covered under FECA on the HCFA PPS as described below:

a. Hospitals must submit bills for inpatient services covered under FECA on the Standard Form UB–92, or its equivalent, with all common information completed. This information includes the hospital's Medicare number, the patient's Social Security number, the FECA claim number when available, the billed amount, and the primary conditions

treated and procedures performed coded under the current edition of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM), Volumes I, II, and III, and/or in accordance with that specified in the yearly update of the HCFA regulations (42 CFR part 412, et. al.)

b. OWCP's adaptation of the HCFA PPS includes use of the HCFA grouper and pricer programs, and an adjustment factor (AF) to the HCFA DRG maximum allowable, which considers the uniqueness of work-related injuries. For example, the median age of the FECA patient is about 42 years, rather than over 65, as is the case under the Medicare program. Secondly, a low volume of FECA patients is expected at any one hospital compared to the number of patients covered under the Medicare program. Thirdly, at times there will be a need for more comprehensive diagnostic and test procedures to determine the work-relatedness of conditions, and/or conditions that may delay return to work. Finally, FECA patients may have nationally common length of stays (LOSs) different than those for Medicare patients, and FECA's goal to return injured employees to work as soon as possible is not a Medicare goal for a retired population.

OWCP believes, however, that the HCFA PPS is well-suited to be the foundation of an OWCP PPS for inpatient services, and that it provides a comprehensive data resource not otherwise available to the Department. OWCP's proposal to use an adjustment factor (AF) to adapt the HCFA PPS to individual program needs is consistent with similar methods used by other federal and state agencies. The AFs used under the OWCP PPS are based on the results of comprehensive studies of inpatient services conducted by OWCP in 1996 and 1990, and on ongoing analyses of medical costs and services provided under FECA.

c. Under OWCP's proposed PPS, the HCFA allowable for a specific DRG at a particular facility constitutes OWCP's Threshold Amount (TA) for the DRG. The OWCP AF to each TA considers: (1) Lengths of stay (LOS) that are outside the HCFA LOS parameters; (2) LOS that are within the HCFA LOS parameters but under OWCP are consistently on the short or long end of the parameter for particular DRGs; and (3) cost outliers that are the result of unique care requirements, particularly expensive hardware such as that frequently used in joint replacements, or are attributable to inflated charges.

In addition: (1) The proposed OWCP PPS per diem rate will not be less than that allowable under the HCFA DRG program when based on the 50th percentile LOS as reported in the **Federal Register** by HCFA for the Medicare program; and (2) the total dollar amounts reduced from billed amounts will be consistent with reduction rates under other portions of the OWCP medical fee schedule and with cost to charge ratios for inpatient services reported by HCFA.

The following abbreviations are used in OWCP's formulae for setting the AF:

TA—Threshold Amount—the HCFA Medicare program maximum allowable for a specific DRG at a particular facility.

TA/H50—Threshold Amount Per Diem rate—the daily rate when the TA is divided by the HCFA national 50th percentile LOS days.

HCFA LOS—The length of stay days as defined under the HCFA national data sets reported in the **Federal Register** yearly; three sets are used for these formulae:

H25 = 25th percentile
H50 = 50th percentile
H75 = 75th percentile

OWCP LOS—The actual number of inpatient days billed for covered services provided a claimant under FECA.

OWCP's formulae for setting the AF are:

(1) The OWCP DRG standard maximum allowable (MA)

The OWCP LOS is within the HCFA LOS parameters, the 25th (H25) to the 75th (H75) percentiles, and the billed amount is not greater than twice the OWCP TA.

(TA × 1.24)—[(TA/H50*0.12) * (H75–LOS)] = MA

(2) The OWCP Short Stay Maximum Allowable (MASS)

The OWCP LOS is less than the HCFA 25th percentile (H25). Short stays regardless of billed amounts are covered under this formula.

[(TA/H50) * (1.72*LOS)] + [(TA/H50*0.33) * (H50–LOS)] = MASS

This formula allows for higher costs typically associated with the first days of an inpatient stay, and an incentive allowance for IP days less than the H25.

(3) The OWCP Long Stay and/or Cost Outlier Maximum Allowable (MACO)

The OWCP LOS is (a) greater than the HCFA 75th (H75) percentile LOS, considered a long stay, or (b) the billed amount is considered a cost outlier (greater than twice the TA) but the LOS is within the HCFA LOS parameters (H25 to H75).

(TA × 1.24) + [(Billed Amount − (TA × 1.24)) × 0.50] = MACO

This formula adjusts for the outlier length of stay, or confinements with documented outlier costs when the length of stay is within the H25–H75. The costs beyond the OWCP MA, however, are only paid at 50% of the billed amount. There is no additional adjustment for number of inpatient days. If the long stay billed amount is less than the TA × 1.24, then no charges are paid at the 50% rate.

These formulae always result in a payment greater than the HCFA Medicare program allowable per diem rate (TA/H50). They are consistent with reimbursement principles used by CHAMPUS, the VA, and state workers' compensation programs for short and long stays, and for cost outliers.

d. OWCP proposes to use a separate schedule to reimburse facilities not covered (FNCs) under the HCFA PPS, such as those that only provide rehabilitation or psychiatric services. The information required on each bill will be the same as that required of acute care facilities, including ICD–9–CM coding of diagnostic conditions being treated and any major procedures performed. During a two-year phase-in period, this FNC schedule is to be based on HCFA-calculated cost to charge ratio (CCR) data for acute care inpatient services, currently set at about 55%, on data shared by CHAMPUS and state workers' compensation programs, and on the 1996 OWCP inpatient hospital services study.

The FNC schedule will be applied to inpatient services provided at FNCs when CCR data is available to OWCP. When CCR data is not available, reimbursements will be negotiated prior to services based on locality FNC estimated CCR and available cost data.

FNC Per diem rate * CCR * 1.24 = FNC MA

Outlier costs will be negotiated based on the FNC formula.

**20 CFR Part 25**

*Subpart A—General Provisions*

Former § 25.3 regarding the use of local workers' compensation law and the Special Schedule has been deleted as unnecessary.

*Subpart C—Extensions of the Special Schedule of Compensation*

Section 25.200(a) now includes a specific statement that direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members

of the Philippine Social Security System are not covered by the modified Special Schedule that is otherwise applicable in the Republic of the Philippines.

In addition, old reserved §§ 25.23 and 25.24 have been deleted as unnecessary. Furthermore, old § 25.25 has also been deleted to reflect OWCP's prior policy determination (and concomitant administrative practice) to apply the lesser of the provisions of local law in the Republic of Korea or FECA (not the special schedule).

**Statutory Authority**

Section 8149 of the Federal Employees' Compensation Act, (5 U.S.C. 8101, *et seq.*), provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Act. Section 5 U.S.C. 8103 provides specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Debt Collection Act of 1982, as amended authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

**Executive Order 12866**

This proposed regulatory action constitutes a ''significant'' rule within the meaning of Executive Order 12866. The Department believes, however, that this regulatory action will not have a significant economic impact on the economy, or any person or organization subject to the proposed changes. The proposed changes will have little or no effect on the level of benefits paid (which in any case involve payments almost exclusively to Federal employees from funds appropriated by Congress); nor will there be a significant economic impact upon the hospitals and pharmacies which, for the first time, will be subject to the fee schedules established by these rules. The total dollar amount paid for inpatient hospital services in fiscal year 1996 was $81,955,562.00, and subjecting these charges to the DRG schedule is expected to result in a 20 percent decrease in the amount paid, or about $16.4 million. The total dollar amount paid for pharmacy costs in fiscal year 1996 was $31.9 million, and subjecting these charges to the fee schedule is expected to result in a 10 to 15 percent decrease in the amount paid, or about $3–4.5 million. Insofar as the proposed amendments make it easier to seek benefits under the FECA and streamline the administration of the program, they would decrease administrative costs. The proposed changes have been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by state, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

**Paperwork Reduction Act**

The new collection of information contained in this rulemaking has been submitted for review to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number.

The new information collection requirements contained in this proposed rule are set forth in §§ 10.801 and 10.802, and they relate to information required to be submitted by pharmacies and hospitals covering certain in-patient bills. The Department is proposing to create a new form (Universal Pharmacy Billing Form) which will be used by pharmacies in submitting claims for payment. Another form (the claimant reimbursement form) will be used by claimants seeking reimbursement for medical expenses for which they have paid the providers directly. The public reporting burden for these collections of information is estimated to average as follows: Universal Pharmacy Billing Form—It will take five (5) minutes to complete the form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information; Claimant Reimbursement Form—we estimate it will take an average of ten (10) minutes to complete this form, including reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department would like to solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review: New Collection.*

*Agency: Employment Standards Administration.*

*Title: Claimant Medical Reimbursement Form (CA–915).*

*OMB Number: None.*

*Affected Public: Individuals or households, Federal Government.*

*Total Respondents: 40,500.*

*Frequency: On occasion.*

*Total Responses: 40,500.*

*Average Time per Response: 10 minutes.*

*Total Hours: 6,723.*

*Total Burden Cost (capital/startup): 0.*

*Total Burden Cost (operating/maintenance): 0.*

*Type of Review: New Collection.*

*Agency: Employment Standards Administration.*

*Title: NCPDP Universal Pharmacy Billing Form (79–1A).*

*OMB Number: None.*

*Affected Public: Businesses or other for-profit; Not-for-profit Institutions; Individuals or households; Federal Government; State, Local or Tribal Government.*

*Total Respondents: 406,198.*

*Frequency: On occasion.*

*Total Responses: 406,198.*

*Average Time per Response: 5 minutes.*

*Total Hours: 33,714.*

*Total Burden Cost (capital/startup): 0.*

*Total Burden Cost (operating/maintenance): 0.*

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue, Washington, DC, 20210; and to the Office of Information and Regulatory Affairs, Attn: ESA Desk Officer, OMB New Executive Office Bldg., 725 17th Street NW., Room 10235, Washington, DC 20003.

**Regulatory Flexibility Act**

The Department believes that the rule will have ''no significant economic impact upon a substantial number of small entities'' within the meaning of

section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The provisions of the proposed rules extending cost control measures to hospital inpatient services and pharmacies is the only provision of the regulations which may have a monetary effect on small businesses. That effect will not be significant on a substantial number of those businesses, however, for no one business bills a significant amount to OWCP for FECA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the government in the aggregate, will not be significant for individual businesses affected.

The two new cost containment provisions are: (1) a set schedule for payment of pharmacy bills; and (2) a prospective payment system for hospital inpatient services. The two methodologies are fully explained in the text of the preamble, including the fact that the use of Diagnostic Related Groups (DRGs) for setting payment for in-patient hospital charges essentially is an adaptation of a system used by the Health Care Finance Agency (HCFA) in payment of Medicare bills. The use of Average Wholesale Prices (AWP) in setting the maximum reimbursable amount for pharmacy bills is also commonplace in the industry.

The method selected by OWCP is therefore one which contains efficiencies both for the government and providers. The government benefits because OWCP did not reinvent the wheel, but minimized resources by adopting existing and well-recognized systems already in place. The providers benefit because submitting a bill to OWCP and receiving payment will be almost the same process as submitting it to Medicare, a program with which hospitals are already familiar and have in place for billing, so they will not have to learn a new process and the FECA bills will not represent an unnecessary administrative cost because the FECA bill process will not be essentially distinguished from that for Medicare. Similarly, the pharmacies are used to billing through clearing houses and having charges subject to limits by private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has kept close to the environment with which the pharmacies are already familiar. The methods chosen, therefore, represent a familiar environment to the providers.

The costs savings resulting from the implementation of these cost containment methods are significant only in the aggregate and will have no significant effect on any individual businesses. First, the need for cost containment in the FECA program is self evident and these methods are already utilized by Medicare, CHAMPUS and Veterans Administration among government entities, and for the private insurance carriers which cover Federal employees as part of the Federal employees' health benefit insurance programs. The costs to providers whose charges may be reduced are relatively small, both in incremental and in actual terms.

Incrementally, FECA bills simply do not represent a large share of any one provider's total business. Since Federal employees are spread throughout the United States and this system covers only those Federal employees who are injured on the job and require either prescription drugs or inpatient hospital care (a tiny subset of all employees), the number of bills submitted by any one provider which may be subject to these provisions is likely to be very small.

Second, in actual terms, the amount by which these bills might be reduced will not have a significant impact on any business. As noted earlier in this preamble, in fiscal year (FY) 1996, the program paid $81.9 million dollars on about 15,700 bills received for in-patient hospital services (an average charge of $5,225.00 per stay). The total number of hospitals on our provider files is about 5,000, for an average patient load of slightly over three FECA-claimant patients per hospital. If we assume that no hospital had more than three patients, then the average annual billings subject to these rules for any hospital would be about $15,775 (3×$5,225). As also noted earlier in the preamble, the DRG method will reduce the $81.9 million by about 20 percent, or $16.4 million. Thus, the average dollar amount of the reduction in bills submitted by any one hospital resulting from these rules would be about $3,150.00.

A similarly small actual dollar reduction applies to pharmacy charges. OWCP paid about $32,000,000 for pharmacy charges, although we cannot identify exactly what portion of this amount was paid to institutions, since much of this dollar figure represents reimbursements directly to claimants. We cannot identify with certainty the number of pharmacies who provided supplies, for the same reason, but there are about 4,000 pharmacies in our provider files. Similarly, we cannot determine the exact number of bills paid, since we capture only those submitted by a provider for direct payment and not those submitted by a claimant for reimbursement. Assuming for purposes of this analysis that the reimbursements were evenly divided among pharmacies already part of our provider files, we divide 4,000 providers in to the total number of dollars paid to get an average annual aggregate of charges paid to a provider of about $8,000.00. It is estimated that the schedule would result in an average reduction of five percent in pharmacy charges; based on these figures, the average pharmacy would see a reduction in the total amount of charges submitted of about $400.

These figures illustrate that the ''cost'' of these rules to any one provider is negligible. On the other hand, OWCP will see substantial aggregate cost savings as a result (estimated at $18,000,000). These savings benefit OWCP (by strengthening the integrity of the program), the employing agencies (which ultimately foot the bill for FECA through the chargeback system), and taxpayer and rate payers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that these rules will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory impact analysis is required.

**List of Subjects for 20 CFR Parts 10 and 25**

Administrative practice and procedures, Claims, Government employees, Labor, Workers' compensation.

For the reasons set forth in the preamble, it is proposed that 20 CFR Chapter I be amended as follows:

1. It is proposed that part 10 be revised to read as follows:

## PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

### Subpart A—General Provisions

Sec.

*Introduction*



*Definitions and Forms*

**Authority:** 5 U.S.C. 301, 8103, 8145 and 8149; 31 U.S.C. 3716 and 3717; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 5–96, 62 FR 107.

## Subpart A—General Provisions

*Introduction*

### § 10.0 What are the provisions of the FECA, in general?

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the FECA.

(a) The FECA has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officers' Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (5 U.S.C. 5351 and 8144), certain law enforcement officers not employed by the United States (5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The FECA provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.

(c) The FECA also provides for payment of monetary compensation to specified survivors of an employee whose death resulted from a work-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the FECA and of this part. This section shall not be construed to modify or enlarge upon the provisions of the FECA.

### § 10.1 What rules govern the administration of the FECA and this chapter?

In accordance with 5 U.S.C. 8145 and Secretary's Order 5–96, the responsibility for administering the FECA, except for 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board, has been delegated to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, delegated the authority and responsibility for administering the FECA to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director, OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

**§ 10.2 What do these regulations contain?**

Part 10 of this chapter sets forth the regulations governing administration of all claims filed under the FECA, except to the extent specified in certain particular provisions. Its provisions are intended to assist persons seeking compensation benefits under the FECA, as well as personnel in the various federal agencies and the Department of Labor who process claims filed under the FECA or who perform administrative functions with respect to the FECA. Part 10 applies to part 25 of this chapter except as modified by part 25. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under the FECA. It contains a statement of purpose and scope, together with definitions of terms, descriptions of basic forms, information about the disclosure of OWCP records, and a description of rights and penalties under the FECA, including convictions for fraud.

(b) Subpart B: The rules for filing notices of injury and claims for benefits under the FECA. It also addresses evidence and burden of proof, as well as the process of making decisions concerning eligibility for benefits.

(c) Subpart C: The rules governing claims for and payment of continuation of pay.

(d) Subpart D: The rules governing emergency and routine medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment which may be authorized and how medical bills are paid.

(e) Subpart E: The rules relating to the payment of monetary compensation benefits for disability, impairment and death. It includes the provisions for identifying and processing overpayments of compensation.

(f) Subpart F: The rules governing the payment of continuing compensation benefits. It includes provisions concerning the employee's and the employer's responsibilities in returning the employee to work. It also contains provisions governing reports of earnings and dependents, recurrences, and reduction and termination of compensation benefits.

(g) Subpart G: The rules governing the appeals of decisions under the FECA. It includes provisions relating to hearings, reconsiderations, and appeals before the Employees' Compensation Appeals Board.

(h) Subpart H: The rules concerning legal representation and for adjustment and recovery from a third party. It also contains provisions relevant to three groups of employees whose status requires special application of the provisions of the FECA: federal grand and petit jurors, Peace Corps volunteers, and non-federal law enforcement officers.

(i) Subpart I: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

**§ 10.3 Have the collection of information requirements of this part been approved by OMB?**

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1215–0055, 1215–0067, 1215–0103, 1215–0115, 1215–0154, 1215–0155, 1215–0167, 1215–0176 and 1215–0182.

*Definitions and Forms*

**§ 10.5 What definitions apply to these regulations?**

Certain words and phrases found in this part are defined in this section or in the FECA statute. Some other words and phrases that are used only in limited situations are defined in the later subparts of these regulations.

(a) *Benefits* or *Compensation* means the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund for lost wages, a loss of wage-earning capacity or a permanent physical impairment, as well as the money paid to beneficiaries for an employee's death. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services, services of an attendant and funeral expenses, but does not include continuation of pay.

(b) *Beneficiary* means an individual who is entitled to a benefit under the FECA and this part.

(c) *Claim* means a written assertion of an individual's entitlement to benefits under the FECA, submitted in a manner authorized by this part.

(d) *Claimant* means an individual whose claim has been filed.

(e) *Director* means the Director of OWCP or a person designated to carry out his or her functions.

(f) *Disability* means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(g) *Earnings from employment or self-employment* means:

(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.

(h) *Employee* means, but is not limited to, an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a federal petit or grand juror.

(i) *Employer* or *Agency* means any civil agency or instrumentality of the United States Government, or any other organization, group or institution employing an individual defined as an ''employee'' by this section. These terms also refer to officers and employees of an employer having responsibility for the supervision, direction or control of employees of that employer as an ''immediate superior,'' and to other employees designated by the employer to carry out the functions vested in the employer under the FECA and this part, including officers or employees delegated responsibility by an employer for authorizing medical treatment for injured employees.

(j) *Entitlement* means entitlement to benefits as determined by OWCP under the FECA and the procedures described in this part.

(k) *FECA* means the Federal Employees' Compensation Act, as amended.

(l) *Hospital services* means services and supplies provided by hospitals within the scope of their practice as defined by State law.

(m) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(n) *Knowingly* means with knowledge, consciously, willfully or intentionally.

(o) *Medical services* means services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

(p) *Medical support services* means services, drugs, supplies and appliances provided by a person other than a physician or hospital.

(q) *Occupational disease or illness* means a condition produced by the work environment over a period longer than a single workday or shift.

(r) *OWCP* means the Office of Workers' Compensation Programs.

(s) *Pay rate for compensation purposes* means the employee's pay, as determined under 5 U.S.C. 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under 5 U.S.C. 8113 with respect to any period.

(t) *Physician* means an individual defined as such in 5 U.S.C. 8101(2), except during the period for which his or her license to practice medicine has been suspended or revoked by a State licensing or regulatory authority.

(u) *Qualified hospital* means any hospital licensed as such under State law which has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified hospital shall be deemed to be designated or approved by OWCP.

(v) *Qualified physician* means any physician who has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(w) *Qualified provider of medical support services or supplies* means any person, other than a physician or a hospital, who provides services, drugs, supplies and appliances for which OWCP makes payment, who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart I of this part.

(x) *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous and material change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical restrictions due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, non-performance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical restrictions.

(y) *Representative* means an individual properly authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the FECA or this part.

(z) *Student* means an individual defined at 5 U.S.C. 8101(17). Two terms used in that particular definition are further defined as follows:

(1) ''Additional type of educational or training institution'' means a technical, trade, vocational, business or professional school accredited or licensed by the United States Government or a state government or any political subdivision thereof providing courses of not less than three months' duration, that prepares the individual for a livelihood in a trade, industry, vocation or profession.

(2) ''Year beyond the high school level'' means:

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she had indicated an intention to continue schooling within four months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance; or

(ii) If the individual has indicated that he or she will not continue schooling within four months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(aa) *Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.

(bb) *Surviving spouse* means the husband or wife living with or dependent for support upon a deceased employee at the time of his or her death, or living apart for reasonable cause or because of the deceased employee's desertion.

(cc) *Temporary aggravation* of a pre-existing condition means that factors of employment have directly caused that condition to be more severe for a limited period of time and have left no greater impairment than existed prior to the employment injury.

(dd) *Traumatic injury* means a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

### § 10.6 What special statutory definitions apply to dependents and survivors?

(a) 5 U.S.C. 8133 provides that certain benefits are payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty.

(b) 5 U.S.C. 8148 also provides that certain other benefits are payable to certain family members of employees who have been incarcerated due to a felony conviction.

(c) 5 U.S.C. 8110(b) further provides that any employee who is found to be eligible for a basic benefit shall be entitled to have such basic benefit augmented at a specified rate for certain persons who live in the beneficiary's household or who are dependent upon the beneficiary for support.

(d) 5 U.S.C. 8101, 8110, 8133 and 8148, which define the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or an augmented benefit, apply to the provisions of this part.

### § 10.7 What forms are needed to process claims under the FECA?

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers are expected to maintain an adequate

supply of the basic forms needed for the proper recording and reporting of injuries.

| Form No. | Title |
|---|---|
| (1) CA–1 ..... | Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation. |
| (2) CA–2 ..... | Notice of Occupational Disease and Claim for Compensation. |
| (3) CA–2a ..... | Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation. |
| (4) CA–3 ..... | Report of Termination of Disability and/or Payment. |
| (5) CA–5 ..... | Claim for Compensation by Widow, Widower and/or Children. |
| (6) CA–5b ..... | Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren. |
| (7) CA–6 ..... | Official Superior's Report of Employee's Death. |
| (8) CA–7 ..... | Claim for Compensation Due to Traumatic Injury or Occupational Disease. |
| (9) CA–8 ..... | Claim for Continuing Compensation on Account of Disability. |
| (10) CA–12 ..... | Claim for Continuance of Compensation. |
| (11) CA–16 ..... | Authorization of Examination and/or Treatment. |
| (12) CA–17 ..... | Duty Status Report. |
| (13) CA–20 ..... | Attending Physician's Report. |
| (14) CA–20a ..... | Attending Physician's Supplemental Report. |

(b) Copies of the forms listed in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from district offices, employers (i.e., safety and health offices, supervisors), and the Internet.

*Information in Program Records*

**§ 10.10 Are all documents relating to claims filed under the FECA considered confidential?**

All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974. All FECA-related records are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). The routine uses to which such records may be put are set forth in the Notice published in the **Federal Register** by the Department of Labor. The regulations and routine uses promulgated by the Department of Labor control decisions regarding access to all FECA-related records.

**§ 10.11 Who maintains custody and control of FECA records?**

All documents covered by DOL/GOVT–1 are official records of OWCP and, as such, are maintained by and under the control of OWCP. While an employer may establish procedures an injured employee or FECA beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor.

**§ 10.12 How may a FECA claimant or beneficiary obtain copies of protected records?**

(a) A claimant seeking copies of his or her official FECA file should address a request to the District Director of the OWCP office having custody of the file. A claimant seeking copies of FECA-related documents in the custody of the employer should follow the procedures established by that agency. In responding to a claimant's request, the employer must comply with the rules and regulations of the Department of Labor which govern all aspects of safeguarding the records.

(b) Any appeal from a decision denying access to the FECA-related documents must be filed with the Solicitor of Labor as provided in 29 CFR part 71.

**§ 10.13 What process is used by a person who wants to correct FECA-related documents?**

Any request to amend a record covered by DOL/GOVT–1 should be directed to the district office having custody of the official file. No employer has the authority to issue determinations with regard to requests for the correction of records contained in or covered by DOL/GOVT–1. Any request for correction received by an employer must be referred to OWCP for review and decision.

*Rights and Penalties*

**§ 10.15 May compensation rights be waived?**

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

**§ 10.16 What are the criminal law penalties for making a false report in connection with a claim under the FECA?**

(a) A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the government in connection with a claim under the FECA. Included among these provisions are sections 287, 1001, 1920, and 1922 of title 18, United States Code. Enforcement of these and other criminal provisions that may apply to claims under the FECA are within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

**§ 10.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?**

When a beneficiary either pleads guilty to or is found guilty on charges of defrauding the federal government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.

**§ 10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?**

(a) Whenever a beneficiary is incarcerated in a state or federal jail, prison, penal institution or other correctional facility due to a state or federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume.

(b) If the beneficiary has eligible dependents, OWCP will pay compensation to such dependents at a reduced rate during the period of his or her incarceration, by applying the percentages of 5 U.S.C. 8133(a)(1) through (5) to the beneficiary's gross current entitlement.

(c) If OWCP's decision on entitlement is pending when the period of incarceration begins, and compensation is due for a period of time prior to such incarceration, payment for that period will only be made to the beneficiary following his or her release.

## Subpart B—Filing Notices and Claims; Submitting Evidence

*Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions*

**§ 10.100 How and when is a notice of traumatic injury filed?**

(a) To claim benefits under the FECA, an employee who sustains a work-related traumatic injury must give notice of the injury in writing on Form CA–1, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may give notice of injury on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee.

(b) For injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. (The form contains the necessary words of claim.) The requirements for filing notice are further described in 5 U.S.C. 8119. Also see § 10.205 concerning time requirements for filing claims for continuation of pay.

(1) If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.

(2) OWCP may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances (for example, being held prisoner of war).

(3) The claimant may withdraw his or her claim (but not the notice of injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

**§ 10.101 How and when is a claim for wage loss compensation on account of traumatic injury filed?**

(a) Form CA–7 is used to claim compensation for initial periods of disability.

(1) An employee who is disabled with loss of pay for more than three calendar days due to an injury, or someone acting on his or her behalf, must file Form CA–7 before compensation can be paid.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP. The form should be completed as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease.

(3) The requirements for filing claims are further described in 5 U.S.C. 8121.

(b) Form CA–8 is used to claim compensation for additional periods of disability after Form CA–7 is submitted to OWCP.

(1) It is the employee's responsibility to submit Form CA–8. Without receipt of such claim, OWCP has no knowledge of continuing wage loss. Therefore, while disability continues, the employee should submit a claim on Form CA–8 each two weeks until otherwise instructed by OWCP.

(2) The employee shall complete the front of Form CA–8 and submit the form to the employer for completion and transmission to OWCP.

(3) The employee is responsible for submitting, or arranging for the submittal of, medical evidence which establishes both that disability continues and that the disability is due to the work-related injury. Form CA–20a is attached to Form CA–8 for this purpose.

**§ 10.102 How and when is a notice of occupational disease filed?**

(a) To claim benefits under the FECA, an employee who has a disease which he or she believes to be work-related must give notice of the condition in writing on Form CA–2, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may do so on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. The claimant may withdraw his or her claim (but not the Notice of Injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For occupational diseases sustained as a result of exposure to injurious work factors that occurs on or after September 7, 1974, a notice of occupational disease must be filed within three years of the onset of the condition. (The form contains the necessary words of claim.) The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

**§ 10.103 How and when is a claim for wage loss compensation on account of occupational disease filed?**

Compensation for the initial period of disability, additional periods of disability, and impairment of a body part is claimed as described in §§ 10.101 and 10.104.

**§ 10.104 How and when is a claim for permanent impairment filed?**

Form CA–7 is used to claim compensation for impairment to a body part covered under the schedule established by 5 U.S.C. 8107. If Form CA–7 has already been filed to claim disability compensation, an employee may file a claim for impairment compensated according to the schedule by sending a letter to OWCP which specifies the nature of the benefit claimed.

**§ 10.105 How and when is a claim for recurrence filed?**

(a) A recurrence should be reported on Form CA–2a if it causes the employee to lose time from work and incur a wage loss. However, a notice of recurrence should not be filed for time loss due to traumatic injury during the period covered by continuation of pay. Also, a notice of recurrence should not be filed when a new injury or event contributing to an occupational disease has occurred. In these instances, the employee should file Form CA–1 or CA–2.

(b) The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(1) The employee must include a statement with Form CA–2a describing his or her duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of his or her physical condition during the intervening period. The employer may submit comments concerning the employee's statement.

(2) The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA–2a. The employee should also submit, or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

**§ 10.106 How and when is a notice of death and claim for benefits filed?**

(a) If an employee dies from a work-related traumatic injury or an occupational disease, any survivor may file a claim for death benefits using Form CA–5 or CA–5b, which may be obtained from the employer. The survivor must provide this notice in writing and forward it to the employer. Another person, including the employer, may do so on the survivor's behalf. The claimant may also submit the completed Form CA–5 or CA–5b directly to OWCP. The claimant shall disclose the SSNs of the survivors in addition to the SSN of the deceased employee. The claimant may withdraw his or her claim (but not the notice of death) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For deaths that occur on or after September 7, 1974, a notice of death must be filed within three years of the death. The form contains the necessary words of claim. The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of death due to latent disability, the time for filing the claim does not begin to run until the claimant is aware, or reasonably should have been aware, of the causal relationship between the death and the employment (see 5 U.S.C. 8122(b)).

(d) The filing of a notice of injury will satisfy the time requirements for a death claim based on the same injury. If an injured employee or someone acting on the employee's behalf does not file a claim before the employee's death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

(e) A survivor must be alive to receive any payment; there is no vested right to such payment. A report as described in § 10.414 of this part must be filed once each year to support continuing payments of compensation.

*Notices and Claims for Injury, Disease, and Death—Employer's Actions*

**§ 10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?**

(a) The employer shall complete the agency portion of Form CA–1 (for traumatic injury) or CA–2 (for occupational disease) no more than five calendar days after receipt of notice from the employee. The employer shall also complete the Receipt of Notice and give it to the employee.

(b) The employer must transmit the form to OWCP within five calendar days if the injury or disease will likely result in:

(1) A medical charge against OWCP;

(2) Disability for work beyond the day or shift of injury;

(3) The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;

(4) Future disability;

(5) Permanent impairment; or

(6) Continuation of pay pursuant to 5 U.S.C. 8118.

(c) The employer should not wait for submittal of supporting evidence before sending the form to OWCP.

(d) If none of the conditions in paragraph (b) of this section applies, the Form CA–1 or CA–2 shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management.

**§ 10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?**

(a) When an employee is disabled by a work-related injury and loses pay for more than three calendar days, or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the employer shall furnish the employee with Form CA–7 for the purpose of claiming compensation.

(b) If the employee is receiving continuation of pay (COP), the employer should give Form CA–7 to the employee by the 30th day of the COP period and submit the form to OWCP by the 40th day of the COP period. If the employee has not returned the form to the employer by the 40th day of the COP period, the employer should ask him or her to submit it as soon as possible.

(c) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

**§ 10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?**

(a) If the employee continues in a leave-without-pay status due to a work-related injury after the period of compensation initially claimed on Form CA–7, the employer shall furnish the employee with Form CA–8 for the purpose of claiming continuing compensation.

(b) Upon receipt of Form CA–8 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–8 and any accompanying medical report to OWCP.

**§ 10.113 What should the employer do when an employee dies from a work-related injury or disease?**

(a) The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to OWCP by telephone, telegram, or telefax. No more than 10 working days after notification of the death, the employer shall complete and send Form CA–6 to OWCP.

(b) When possible, the employer shall furnish a Form CA–5 or CA–5b to all persons likely to be entitled to compensation for death of an employee. The employer should also supply information about completing and filing the form.

(c) The employer shall promptly transmit Form CA–5 or CA–5b to OWCP. The employer shall also promptly transmit to OWCP any other claim or paper submitted which appears to claim compensation on account of death.

*Evidence and Burden of Proof*

**§ 10.115 What evidence is needed to establish a claim?**

Forms CA–1, CA–2, CA–5 and CA–5b describe the basic evidence required. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must

be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the U.S. as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

**§ 10.116 What additional evidence is needed in cases based on occupational disease?**

(a) The employee must submit the specific detailed information described on Form CA–2 and on any checklist (Form CA–35, A–H) provided by the employer. OWCP has developed these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA–2 and on any checklist pertaining to the claimed disease.

**§ 10.117 What happens if the employer contests any of the facts as stated by the claimant?**

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change the claim.

**§ 10.118 Does the employer participate in the claims process in any other way?**

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the provisions of the Privacy Act apply to any endeavor by the employer to ascertain the facts of the case (see §§ 10.10 and 10.11).

(c) The employer does not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process.

**§ 10.119 What action will OWCP take with respect to information submitted by the employer?**

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken. Where an employer contests a claim at time of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

**§ 10.120 May a claimant submit additional evidence?**

A claimant or a person acting on his or her behalf may submit to OWCP at any time any other evidence relevant to the claim.

**§ 10.121 What happens if OWCP needs more evidence from the claimant?**

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the employee of the additional evidence needed. The claimant will be allowed up to 30 calendar days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

*Decisions on Entitlement to Benefits*

**§ 10.125 How does OWCP determine entitlement to benefits?**

(a) In reaching any decision with respect to FECA coverage or entitlement, OWCP considers the claim presented by the claimant, the report by the employer, and the results of such investigation as OWCP may deem necessary.

(b) OWCP claims staff apply the law, the regulations, and its procedures to the facts as reported or obtained upon investigation. They also apply decisions of the Employees' Compensation Appeals Board and administrative decisions of OWCP as set forth in FECA Program Memoranda.

**§ 10.126 What does the decision contain?**

The decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include the right to a hearing, a reconsideration, and/or a review by the Employees' Compensation Appeals Board. (See subpart G of this part.)

**§ 10.127 To whom is the decision sent?**

A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision should also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer.

## Subpart C—Continuation of Pay

**§ 10.200 What is continuation of pay?**

(a) For most employees who sustain a traumatic injury, the FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay, or COP. The employer, not OWCP, pays COP. Unlike workers' compensation benefits, COP is subject to taxes and all other payroll deductions that are made from regular income.

(b) While the employer must generally continue the pay of an employee entitled to COP, the employer may make certain preliminary determinations regarding an employee's entitlement to COP (including not paying salary under § 10.220 or terminating COP under § 10.221), and may in all circumstances controvert the payment. OWCP has the exclusive authority to finally determine questions of entitlement and all other issues relating to COP.

(c) The FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to: persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay; volunteers (for instance, in the Civil Air Patrol and Peace Corps); Job Corps and Youth Conservation Corps enrollees; individuals in work-study programs, and grand or petit jurors (unless otherwise federal employees).

*Eligibility for COP*

**§ 10.205 What other conditions must be met to receive COP?**

(a) To be eligible for COP, a person must:

(1) Have a ''traumatic injury'' as defined at § 10.5(dd) which is job-related and the cause of the disability;

(2) File Form CA–1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 30 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see § 10.220).

**§ 10.206 May an employee who uses leave after an injury later decide to use COP instead?**

On Form CA–1, an employee may elect to use accumulated sick or annual leave, or leave advanced by the agency, instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the following provisions apply:

(a) The request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP, whichever is later.

(b) Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

(c) The use of leave may not be used to delay or extend the 45-day COP period or to otherwise affect the time limitation as provided by 5 U.S.C. 8117. Therefore, any leave used during the period of eligibility counts towards the 45 day maximum entitlement to COP.

**§ 10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?**

If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

(a) The employee completes Form CA–2a and elects to receive regular pay;

(b) OWCP did not deny the original claim for disability;

(c) The disability recurs and the employee stops work within 30 days of the time the employee first returned to work following the initial period of disability; and

(d) Pay has not been continued for the entire 45 days.

*Responsibilities*

**§ 10.210 What are the employee's responsibilities in COP cases?**

An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for COP. The employee must:

(a) Complete and submit Form CA–1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred.

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

(c) Ensure that relevant medical evidence is submitted to OWCP, and cooperate with OWCP in developing the claim.

(d) Ensure that the treating physician specifies work restrictions and provides them to the employer and/or representatives of OWCP.

(e) Provide to the treating physician a description of any specific alternative positions offered the employee, and ensure that the treating physician responds promptly to the employer and/or OWCP, with an opinion as to whether and how soon the employer could perform that or any other specific position.

**§ 10.211 What are the employer's responsibilities in COP cases?**

Once the employer learns of a traumatic injury sustained by an employee, it shall:

(a) Provide a Form CA–1 and Form CA–16 to authorize medical care in accordance with § 10.300. Failure to do so may mean that OWCP will not uphold any termination of COP by the employer.

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability.

(c) Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.

(d) Complete Form CA–1 (or other form approved by the Secretary) and return it, along with all other available pertinent information, (including the basis for any controversion), to OWCP within five calendar days after receiving the completed form from the employee.

*Calculation of COP*

**§ 10.215 How does OWCP compute the number of days of COP used?**

COP is payable for a maximum of 45 calendar days, and every day used is counted toward this maximum. The following rules apply:

(a) Time lost on the day or shift of the injury does not count toward COP. (Instead, the agency must keep the employee in a pay status for that period);

(b) The first COP day is the first day disability begins following the date of injury (providing it is within the 30 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding and following the regular day(s) off; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45 day COP maximum as if the employee had been in a COP status.

**§ 10.216 How is the pay rate for COP calculated?**

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular ''weekly'' pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime, but includes applicable premium, Sunday and holiday pay, night and shift differential or other extra pay.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a

temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (×) the number of hours worked each week (B): A × B = Weekly Pay Rate.

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (÷) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or part of a week) worked in that year (B): A÷B = Weekly Pay Rate.

(3) For intermittent, seasonal and on-call workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (÷) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or part of a week) worked during that year (B) (that is, A÷B); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

**§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?**

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury. This includes work which results in loss of salary or premium (that is, Sunday or night differential) pay authorized for the employee's normal administrative workweek.

*Controversion and Termination of COP*

**§ 10.220 When is an employer not required to pay COP?**

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after employment has been terminated;

(e) The injury occurred off the premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 30 days following the injury.

**§ 10.221 How is a claim for COP controverted?**

When the employer stops an employee's pay for one of the reasons in § 10.220, the employer must controvert the claim for COP on Form CA–1, explaining in detail the basis for the refusal. The final determination on entitlement to COP always rests with OWCP.

**§ 10.222 When may an employer terminate COP which has already begun?**

(a) Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:

(1) Medical evidence which on its face supports disability due to a work-related injury, is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist);

(2) The medical evidence from the treating physician shows the individual is not disabled from his or her regular position;

(3) Medical evidence from the treating physician shows that the employee is not totally disabled and the employee refuses a written offer of a suitable alternative position as determined by OWCP;

(4) The employee returns to work with no loss of pay;

(5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury);

(6) OWCP directs the employer to stop COP; and/or

(7) COP has been paid for 45 calendar days.

(b) An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action becomes final or otherwise takes effect during the COP period.

(c) An employer must file a controversion with OWCP, setting forth the basis on which it terminated COP, no later than the effective date of the termination.

**§ 10.223 Are there other circumstances under which OWCP will not authorize payment of COP?**

When OWCP finds that an employee refuses or obstructs a required medical examination, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584.

**§ 10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?**

Where OWCP finds that the employee is not entitled to COP after it has been paid, the employee may chose to have the time charged to annual or sick leave, or considered an overpayment of pay under 5 U.S.C. 5584. The employer must correct any deficiencies in COP as directed by OWCP.

## Subpart D—Medical and Related Benefits

*Emergency Medical Care*

**§ 10.300 What are the basic rules for authorizing emergency medical care?**

(a) When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA–16. This form may be used for occupational disease or illness only if the employer has obtained prior permission from OWCP.

(b) The employer shall issue Form CA–16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA–16 within 48 hours. The employer is not required to issue a Form CA–16 more than one week after the occurrence of the claimed injury. The employer may not authorize examination or medical or other treatment in any case that OWCP has disallowed.

(c) Form CA–16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date

the form and must state his or her title. Form CA–16 authorizes treatment for 60 days from the date of issuance, unless OWCP terminates the authorization sooner.

(d) The employee has an initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a federal agency such as the Department of the Army, Navy, Air Force, or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also § 10.825(b).

**§ 10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?**

The physician designated on Form CA–16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facility's bill on the authority of Form CA–16. The employer should not issue a second Form CA–16.

**§ 10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?**

If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA–16 and checking block 6B of the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work-related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment.

**§ 10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?**

(a) Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA–16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. OWCP will authorize preventive treatment only under certain well-defined circumstances (see § 10.313).

(b) Employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at Chapter XVII of Title 29 of the Code of Federal Regulations require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard. In addition, 5 U.S.C. 7901 authorizes employers to establish health programs whose staff can perform tests for workplace hazards, counsel employees for exposure or feared exposure to such hazards, and provide health care screening and other associated services.

**§ 10.304 Are there any exceptions to these procedures?**

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

*Medical Treatment and Related Issues*

**§ 10.310 What are the basic rules for obtaining medical care?**

(a) The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

**§ 10.311 What are the special rules for the services of chiropractors?**

(a) The services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) In accordance with 5 U.S.C. 8101(3), a diagnosis of spinal ''subluxation as demonstrated by X-ray to exist'' must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

**§ 10.312 What are the special rules for the services of clinical psychologists?**

A clinical psychologist may serve as a physician only within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include an organic component unless the applicable state law allows clinical psychologists to treat organic conditions. A clinical psychologist may also perform testing, evaluation and other services under the direction of a qualified physician.

**§ 10.313 Will OWCP pay for preventive treatment?**

The FECA does not authorize payment for preventive measures such as vaccines and inoculations, and in general, preventive treatment may be a responsibility of the employing agency under the provisions of 5 U.S.C. 7901 (see § 10.303). However, OWCP can authorize treatment for the following conditions, even though such treatment is designed, in part, to prevent further injury:

(a) Complications of preventive measures which are provided or sponsored by the agency, such as an adverse reaction to prophylactic immunization.

(b) Actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection. Examples include the provision of tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine for a bite from a rabid or potentially rabid animal; or appropriate measures where exposure to human immunodeficiency virus (HIV) has occurred.

(c) Conversion of tuberculin reaction from negative to positive following exposure to tuberculosis in the performance of duty. In this situation, the appropriate therapy may be authorized.

(d) Where injury to one eye has resulted in loss of vision, periodic

examination of the uninjured eye to detect possible sympathetic involvement of the uninjured eye at an early stage.

**§ 10.314 Will OWCP pay for the services of an attendant?**

Yes, the OWCP will pay for the services of an attendant up to a maximum of $1,500 per month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. 8111(a), the Director has determined that, except where payments were being made prior to [insert the effective date of the final rule], direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act. This decision is based on the following factors:

(a) The additional payments authorized under section 8111(a) should not be necessary since OWCP will authorize payment for personal care services under 5 U.S.C. 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

(b) A home health aide, licensed practical nurse, or similarly trained individual is better able to provide quality personal care including assistance in feeding, bathing, and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, OWCP can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to OWCP will result in greater fiscal accountability as the amount billed will be subject to OWCP's fee schedule.

**§ 10.315 Will OWCP pay for transportation to obtain medical treatment?**

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel. The standard form designated for federal employees to claim travel expenses should be used to seek reimbursement under this section.

**§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?**

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

*Directed Medical Examinations*

**§ 10.320 Can OWCP require an employee to be examined by another doctor?**

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

**§ 10.321 What happens if the physician selected by OWCP does not agree with the physician selected by the employee?**

If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see 5 U.S.C. 8123(a)). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

**§ 10.322 Who pays for second opinion and referee examinations?**

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

**§ 10.323 What are the consequences of failing to report for or obstructing a second opinion or referee examination?**

If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

**§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?**

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA–16.

*Medical Reports*

**§ 10.330 What are the requirements for medical reports?**

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

**§ 10.331 How and when should the medical report be submitted?**

(a) Form CA–16 may be used for the initial medical report; Form CA–20 may be used for the initial report and for subsequent reports; and Form CA–20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA–17 to obtain interim reports concerning the duty status of an employee with a disabling traumatic injury.

**§ 10.332 What additional medical information will OWCP require to support continuing payment of benefits?**

In all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the condition accepted by OWCP, a prognosis, a description of work limitations, if any, and the physician's opinion as to the continuing causal relationship between the employee's condition and factors of his or her federal employment.

**§ 10.333 What additional medical information will OWCP require to support a claim for a schedule award?**

To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member. These measurements may include: the actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; and pain due to nerve impairment.

*Medical Bills*

**§ 10.335 How are medical bills submitted?**

Usually, medical providers submit bills directly to OWCP. The rules for submitting and paying bills are stated in subpart I of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 10.802.

**§ 10.336 What are the time frames for submitting bills?**

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

**§ 10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?**

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services (see § 10.805). The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the provider of the maximum allowable charge for the service in question and ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as provided by § 10.812.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

## Subpart E—Compensation and Related Benefits

*Compensation for Disability and Impairment*

**§ 10.400 What is total disability?**

(a) Permanent total disability is presumed to result from the loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes. However, the presumption of permanent total disability as a result of such loss may be rebutted by evidence to the contrary, such as evidence of continued ability to work and to earn wages despite the loss.

(b) Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee's disability status is always considered temporary pending return to work.

**§ 10.401 When and how is compensation for total disability payable?**

(a) Compensation is payable when the employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 days. Otherwise, compensation is payable on the fourth day after pay stops. Compensation may not be paid while an injured employee is in a continuation of pay status or receives pay for leave.

(b) Compensation for total disability is payable at the rate of 66⅔ percent of the pay rate if the employee has no dependents, or 75 percent of the pay rate if the employee has at least one dependent.

**§ 10.402 What is partial disability?**

An injured employee who cannot return to the position held at the time of injury (or earn equivalent wages) due to the work-related injury, but who is not totally disabled for all gainful employment, is considered to be partially disabled.

**§ 10.403 When and how is compensation for partial disability paid?**

(a) 5 U.S.C. 8115 outlines how compensation for partial disability is determined. If the employee has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings may form the basis for payment of compensation for partial disability. If the employee's actual earnings do not fairly and reasonably represent his or her wage-

earning capacity, or if the employee has no actual earnings, OWCP uses the factors stated in 5 U.S.C. 8115 to select a position which represents his or her wage-earning capacity. However, OWCP will not secure employment for the employee in the position selected for establishing a wage-earning capacity.

(b) Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. The percentage is 66⅔ percent of this difference if the employee has no dependents, or 75 percent of this difference if the employee has at least one dependent.

(c) The formula which OWCP uses to compute the compensation payable for partial disability employs the following terms: pay rate for compensation purposes, which is defined in § 10.5(s) of this part; current pay rate, which means the salary or wages for the job held at the time of injury at the time of the determination; and earnings, which means the employee's actual earnings, or the salary or pay rate of the position selected by OWCP as representing the employee's wage-earning capacity.

(d) The employee's wage-earning capacity in terms of percentage is computed by dividing the employee's earnings by the current pay rate. The comparison of earnings and ''current'' pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

(e) The employee's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity.

### § 10.404 When and how is compensation for a schedule impairment paid?

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* available from the Order Department, OP–025493, American Medical Association, P.O. Box 109050, Chicago, Illinois, 60610.

(a) 5 U.S.C. 8107(c) provides a list of schedule members. Pursuant to the authority provided by 5 U.S.C. 8107(c)(22), the Secretary has added the following organs to the compensation schedule for injuries that were sustained on or after September 7, 1974:

| Member | Weeks |
|---|---|
| Breast (one) | 52 |
| Kidney (one) | 156 |
| Larynx | 160 |
| Lung (one) | 156 |
| Penis | 205 |
| Testicle (one) | 52 |
| Tongue | 160 |
| Ovary (one) | 52 |
| Uterus/cervix and vulva/vagina | 205 |

(b) Compensation for schedule awards is payable at 66⅔ percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.

(c) The period of compensation payable under 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function, or for disfigurement; and

(2) OWCP finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(d) Compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment.

### § 10.405 Who is considered a dependent in a claim based on disability or impairment?

(a) Dependents include a wife or husband; an unmarried child under 18 years of age; an unmarried child over 18 who is incapable of self-support; a student, until he or she reaches 23 years of age or completes four years of school beyond the high school level; or a wholly dependent parent.

(b) Augmented compensation payable for an unmarried child, which would otherwise terminate when the child reached the age of 18, may be continued while the child is a student as defined in 5 U.S.C. 8101(17).

### § 10.406 What are the maximum and minimum rates of compensation in disability cases?

(a) Compensation for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments.) However, this limit does not apply to disability sustained in the performance of duty which was due to an assault which occurred during an attempted assassination of a federal official described under 10 U.S.C. 351(a) or 1751(a).

(b) Compensation for total disability may not be less than 75 percent of the basic monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less. (Basic monthly pay does not include locality adjustments.)

*Compensation for Death*

### § 10.410 What are the rates of compensation payable in death cases?

The rates of compensation payable in death cases are stated in 5 U.S.C. 8133.

### § 10.411 What are the maximum and minimum rates of compensation in death cases?

(a) Compensation for death may not exceed the employee's pay or 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule, except that compensation may exceed the employee's basic monthly pay if such excess is created by authorized cost-of-living increases. (Basic monthly pay does not include locality adjustments.) However, the maximum limit does not apply when the death occurred during an assassination of a federal official described under 18 U.S.C. 351(a) or 18 U.S.C. 1751(a).

(b) Compensation for death is computed on a minimum pay rate equal to the basic monthly pay of an employee at the first step of grade 2 of the General Schedule. (Basic monthly pay does not include locality adjustments.)

### § 10.412 Will OWCP pay the costs of burial and transportation of the remains?

In a case accepted for death benefits, OWCP will pay up to $800 for funeral and burial expenses. When an employee's home is within the U.S. and the employee dies outside the U.S., or away from home or the official duty station, an additional amount may be paid for transporting the remains to the employee's home. An additional amount of $200 is paid to the personal representative of the decedent for reimbursement of the costs of

terminating the decedent's status as an employee of the United States.

**§ 10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?**

The circumstances under which the balance of a schedule award may be paid to an employee's survivors are described in 5 U.S.C. 8109. Therefore, if there is no surviving spouse or child, OWCP will pay benefits as follows:

(a) To the parent, or parents, wholly dependent for support on the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(b) To the parent, or parents, partially dependent for support on the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(c) To the parent, or parents, partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

**§ 10.414 What reports of dependents are needed in death cases?**

If a beneficiary is receiving compensation benefits on account of an employee's death, OWCP will ask him or her to complete a report once each year on Form CA–12. The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or an equivalent written statement) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

**§ 10.415 What must a beneficiary do if the number of beneficiaries decreases?**

The circumstances under which compensation on account of death shall be terminated are described in 5 U.S.C. 8133(b). A beneficiary in a claim for death benefits should promptly notify OWCP of any event which would affect his or her entitlement to continued compensation. The terms ''marriage'' and ''remarriage'' include common-law marriage as recognized and defined by state law in the state where the beneficiary resides. If a beneficiary, or someone acting on his or her behalf, receives a check which includes payment of compensation for any period after the date when entitlement ended, he or she must promptly return the check to OWCP.

**§ 10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?**

If compensation to a beneficiary is terminated, the amount of compensation payable to one or more of the remaining beneficiaries may be reapportioned. Similarly, the birth of a posthumous child may result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify OWCP of the birth and submit a copy of the birth certificate.

**§ 10.417 What reports are needed when compensation payments continue for children over age 18?**

(a) Compensation payable on behalf of a child, brother, sister, or grandchild, which would otherwise end when the person reaches 18 years of age, shall be continued if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask a beneficiary receiving compensation based on the student status of a dependent to provide proof of continuing entitlement to such compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask a beneficiary or legal guardian receiving compensation based on a dependent's physical or mental inability to support himself or herself to submit a medical report verifying that the dependent's medical condition persists and that it continues to preclude self-support.

*Adjustments to Compensation*

**§ 10.420 How are cost-of-living adjustments applied?**

(a) In cases of disability, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where injury-related disability began more than one year prior to the date the cost-of-living adjustment took effect. The employee's use of continuation of pay as provided by 5 U.S.C. 8118, or of sick or annual leave, during any part of the period of disability does not affect the computation of the one-year period.

(b) Where an injury does not result in disability but compensation is payable for permanent impairment of a covered member, organ or function of the body, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.

(c) In cases of recurrence of disability, where the pay rate for compensation purposes is the pay rate at the time disability recurs, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the effective date of that pay rate began more than one year prior to the date the cost-of living adjustment took effect.

(d) In cases of death, entitlement to cost-of-living adjustments under 5 U.S.C. 8146(a) begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

**§ 10.421 May a beneficiary receive other kinds of payments from the federal government concurrently with compensation?**

(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable.

(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. 5532(b).

(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member with severance pay or separation pay.

(d) Pursuant to 5 U.S.C. 8116(d), a beneficiary may receive compensation under the FECA for either the death or disability of an employee concurrently with benefits under title II of the Social Security Act on account of the age or death of such employee. However, this provision of the FECA also requires OWCP to reduce the amount of any such

compensation by the amount of any Social Security Act benefits that are attributable to the federal service of the employee.

(e) To determine the employee's entitlement to compensation, OWCP may require an employee to submit an affidavit or statement as to the receipt of any federally funded or federally assisted benefits. If an employee fails to submit such affidavit or statement within 30 days of the date of the request, his or her right to compensation shall be suspended until such time as the requested affidavit or report is received. At that time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

**§ 10.422 May compensation payments be issued in a lump sum?**

(a) In exercise of the discretion afforded under 5 U.S.C. 8135(a), OWCP has determined that lump-sum payments will not be made to persons entitled to wage-loss benefits (that is, those payable under 5 U.S.C. 8105 and 8106). Therefore, when OWCP receives requests for lump-sum payments for wage-loss benefits, OWCP will not exercise further discretion in the matter. This determination is based on several factors, including:

(1) The purpose of the FECA, which is to replace lost wages;

(2) The prudence of providing wage-loss benefits on a regular, recurring basis; and

(3) The high cost of the long-term borrowing that is needed to pay out large lump sums.

(b) However, a lump sum payment may be made to an employee entitled to a schedule award under 5 U.S.C. 8107 where OWCP determines that such a payment is in the employee's best interest. Lump-sum payments of schedule awards generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. 8107.

(c) Lump-sum payments to surviving spouses are addressed in 5 U.S.C. 8135(b).

**§ 10.423 May compensation payments be assigned to, or attached by, creditors?**

(a) As a general rule, compensation and claims for compensation are exempt from the claims of private creditors. This rule does not apply to claims submitted by federal agencies. Further, any attempt by a FECA beneficiary to assign his or her claim is null and void. However, pursuant to provisions of the Social Security Act, 42 U.S.C. 659, and regulations issued by the Office of Personnel Management (OPM) at 5 CFR part 581, FECA benefits, including survivor's benefits, may be garnished to collect overdue alimony and child support payments.

(b) Garnishment for child support and alimony may be requested by providing a copy of the state agency or court order to the district office handling the FECA claim.

**§ 10.424 May someone other than the beneficiary be designated to receive compensation payments?**

A beneficiary may be incapable of managing or directing the management of his or her benefits because of a mental or physical disability, or because of legal incompetence, or because he or she is under 18 years of age. In this situation, absent the appointment of a guardian or other party to manage the financial affairs of the claimant by a court or administrative body authorized to do so, OWCP in its sole discretion may approve a person to serve as the representative payee for funds due the beneficiary.

*Overpayments*

**§ 10.430 How does OWCP notify an individual of a payment made?**

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each periodic check an indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the date and amount of the payment and the period for which payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

**§ 10.431 What does OWCP do when an overpayment is identified?**

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy Government records relating to the overpayment; and

(d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

**§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?**

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.

**§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?**

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the

individual's capacity to realize that he or she is being overpaid.

**§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?**

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

**§ 10.435 Is an individual responsible for an overpayment that resulted from an error by OWCP or another government agency?**

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another governmental agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award length and/or percentage of impairment, or loss of wage-earning capacity.

**§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?**

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) The beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

**§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?**

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

**§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?**

(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

**§ 10.439 May other issues be addressed at the pre-recoupment hearing?**

At the pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. The hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

**§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?**

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision.

**§ 10.441 How are overpayments collected?**

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.

(b) When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Debt Collection Act of 1982 and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

## Subpart F—Continuing Entitlement to Benefits

**§ 10.500 What are the basic rules governing continuing receipt of compensation benefits?**

OWCP's goal is to return each disabled employee to suitable work as

soon as medically able. ''Suitable work'' is defined as employment which is: appropriate to the nature of the injury; the degree of physical impairment; the employee's usual work; the employee's age; the employee's qualifications for other work; and the availability of the work.

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. Payment of medical benefits is available for all treatment necessary due to a work-related medical condition. The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation, narrative medical evidence must be submitted whenever OWCP requests it but not less than once a year. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical restrictions based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

(c) In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a referee examination to resolve the issue. The results of the referee examination will be given special weight in determining the issue.

(d) Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation, benefits will not be terminated or reduced unless the weight of the evidence establishes that:

(1) The disability for which compensation was paid has ceased;

(2) The disabling condition is no longer causally related to the employment;

(3) The employee is only partially disabled;

(4) The employee has returned to work;

(5) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or

(6) OWCP's initial decision was in error.

*Return to Work—Employer's Responsibilities*

**§ 10.505 What actions must the employer take?**

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term ''return to work'' as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered within one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

(c) The employer must make any job offer in writing. The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

**§ 10.506 May the employer monitor the employee's medical care?**

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

**§ 10.507 How should the employer make an offer of suitable work?**

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee of the specific duties and physical requirements, the employer should notify the employee immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee of the duties, their physical requirements and availability.

**§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?**

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may

offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a federal employer. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the federal travel regulations for permanent changes of duty station.

**§ 10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?**

(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made.

(b) For the purposes of this section only, a ''light-duty position'' means a classified position that conforms to the established physical restrictions of the injured employee and for which the employer has already prepared a written position description such that the position constitutes ''regular'' federal employment. In the absence of a ''light duty position'' as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive employment which does not represent the employee's wage-earning capacity, i.e., work of the type provided to injured employees who cannot otherwise be employed by the federal government or in any well-known branch of the general labor market.

*Return to Work—Employee's Responsibilities*

**§ 10.515 What actions must the employee take?**

(a) If an employee can resume regular federal employment because total disability has ceased, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must accept suitable work. (See § 10.500 for a definition of ''suitable work''.) This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the federal government, state and local governments, or in the private sector.

**§ 10.516 How will an employee know if OWCP considers a job to be suitable?**

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

**§ 10.517 What are the penalties for refusing to accept a suitable job offer?**

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

**§ 10.518 Does OWCP provide services to help employees return to work?**

(a) OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the worksite, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of medical evidence established by OWCP, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff perform this function.

(b) Vocational rehabilitation services may also include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

**§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?**

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes

meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the OWCP nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

**§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?**

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

*Reports of Earnings From Employment and Self-Employment*

**§ 10.525 What information must the employee report?**

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. In addition, an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part-time or full-time. (See § 10.5(g) for a definition of ''earnings''.)

(b) The employee must report even those earnings which do not seem likely to affect his or her level of benefits. Many kinds of income, though not all, will result in reduction of compensation benefits. While earning income will not necessarily result in a reduction of compensation, failure to report income may result in forfeiture of all benefits paid during the reporting period.

**§ 10.526 Must the employee report self-employment?**

The employee is required to report self-employment, including volunteer work or any other kind of activity which shows that the employee is no longer totally disabled for work.

**§ 10.527 Does OWCP verify reports of earnings?**

To make proper determinations of an employee's entitlement to benefits, OWCP may attempt to verify the earnings reported by the employee through a variety of means, including but not limited to computer matches with the Office of Personnel Management and inquiries to the Social Security Administration. Also, OWCP may perform computer matches with records of state workers' compensation administrations to determine whether private employers are paying workers' compensation insurance premiums for recipients of benefits under the FECA.

**§ 10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?**

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

**§ 10.529 What action will OWCP take if the employee files an incomplete report?**

(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. 8129 and other relevant statutes.

*Reports of Dependents*

**§ 10.535 How are dependents defined, and what information must the employee report?**

(a) Dependents are defined in § 10.405. While the employee has one or more dependents, the employee's basic compensation for wage loss or for permanent impairment shall be augmented as provided in 5 U.S.C. 8110. (The rules for death claims are found in § 10.414.)

(b) An employee who is receiving augmented compensation on account of dependents must advise OWCP immediately of any change in the number or status of dependents. The employee should also promptly refund to OWCP any amounts received on account of augmented compensation after the right to receive augmented compensation has ceased. Any difference between actual entitlement and the amount already paid beyond the date entitlement ended is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other relevant statutes.

(c) An employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.

**§ 10.536 What is the penalty for failing to submit a report of dependents?**

If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.

**§ 10.537 What reports are needed when compensation payments continue for children over age 18?**

(a) Compensation payable on behalf of a child that would otherwise end when the child reaches 18 years of age will continue if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask an employee who receives compensation based on the student status of a child to provide proof of continuing entitlement to such

compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask an employee who receives compensation based on a child's physical or mental inability to support himself or herself to submit a medical report verifying that the child's medical condition persists and that it continues to preclude self-support.

(d) If an employee fails to submit proof within 30 days of the date of the request, OWCP will suspend the employee's right to compensation until the requested information is received. At that time OWCP will reinstate compensation retroactive to the date of suspension, provided the employee is entitled to such compensation.

*Reduction and Termination of Compensation*

**§ 10.540 When and how is compensation reduced or terminated?**

(a) Except as provided in paragraphs (b) and (c) of this section, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation. This notice will include a description of the reasons for the proposed action and a copy of the evidence upon which OWCP is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until 30 days have elapsed if no additional evidence or argument is submitted.

(b) OWCP will not provide such written notice when the beneficiary has no reasonable basis to expect that payment of compensation will continue. For example, when a claim has been made for a specific period of time and that specific period expires, no written notice will be given. Written notice will also not be given when a beneficiary dies, when OWCP either reduces or terminates compensation when an employee returns to work, when OWCP terminates medical benefits only after a physician indicates that further medical treatment is not necessary or has ended, or when OWCP denies payment for a particular medical expense.

(c) OWCP will also not provide such written notice when compensation is suspended or forfeited due to one of the following: a beneficiary's conviction for fraud in connection with a claim under the FECA, a beneficiary's incarceration based on any felony conviction, an employee's failure to report earnings from employment or self-employment, an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work, or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

**§ 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?**

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

## Subpart G—Review Process

**§ 10.600 How can final decisions of OWCP be reviewed?**

There are three methods for reviewing an initial final decision of the OWCP (§§ 10.125–10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to ECAB are found at part 501 of this title.

*Reconsiderations and Reviews by the Director*

**§ 10.605 What is reconsideration?**

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the ''application for reconsideration.''

**§ 10.606 How does a claimant request reconsideration?**

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Set forth arguments and contain evidence that either:

(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by OWCP; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

**§ 10.607 What is the deadline for requesting reconsideration?**

(a) An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

**§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?**

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(2). If reconsideration is granted, the case is

reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

**§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?**

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 15 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 15 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

**§ 10.610 What is a review by the Director?**

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained.

(a) The decision whether or not to review an award under this section is solely within the discretion of the Director. The Director's exercise of this discretion is not subject to review by the ECAB, nor can it be the subject of a reconsideration or hearing request.

(b) Where the Director reviews an award on his or her own motion, any resulting decision is subject as appropriate to reconsideration, a hearing and/or appeal to the ECAB. Jurisdiction on review or on appeal to ECAB is limited to a review of the merits of the resulting decision. The Director's determination to review the award is not reviewable.

*Hearings*

**§ 10.615 What is a hearing?**

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference. In addition to the evidence of record, the employee may submit new evidence to the hearing representative.

**§ 10.616 How does a claimant obtain a hearing?**

(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

(b) The claimant may specify the type of hearing desired when making the original hearing request. If the request does not specify a format, OWCP will schedule an oral hearing. The claimant can request a change in the format of the hearing by making a written request to the Branch of Hearings and Review. A request received by the Branch of Hearings and Review before either the date OWCP issues notice that the record is closed for written review, or the date OWCP issues a notice that OWCP has set a date for an oral hearing, will be granted. A request received after that date will be subject to OWCP's discretion. The decision to grant or deny a change of format is not reviewable.

**§ 10.617 How is an oral hearing conducted?**

(a) The hearing representative retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved.

(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be notified at least 30 days before the scheduled date.

(c) The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure or by section 5 of the Administrative Procedure Act. During the hearing process, the claimant may state his or her arguments and present new written evidence in support of the claim.

(d) Testimony at oral hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) OWCP will furnish a transcript of the oral hearing to the claimant and the employer, who have 15 days from the date it is sent to comment. Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

(f) The hearing remains open for the submittal of additional evidence until the date the decision is mailed to the claimant's last known address and to any representative. A copy of the decision will also be mailed to the employer.

(g) The hearing representative determines the conduct of the oral hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

**§ 10.618 How is a review of the written record conducted?**

(a) The hearing representative will review the official record and any additional evidence submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation is deemed necessary. New evidence and arguments may be submitted at any time up to the

time the hearing is closed, but it should be submitted as soon as possible to avoid delaying the hearing process.

(b) The claimant should submit, with his or her application for review, all evidence or argument that he or she wants to present to the hearing representative. A copy of all pertinent material will be sent to the employer, which will have 15 days from the date it is sent to comment. (Medical evidence is not considered ''pertinent'' for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has sole responsibility for evaluating medical evidence.) Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

**§ 10.619 May subpoenas be issued for witnesses and documents?**

A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(a) A claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must:

(1) Submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.

(2) Explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

**§ 10.620 Who pays the costs associated with subpoenas?**

(a) Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

**§ 10.621 What is the employer's role when an oral hearing has been requested?**

(a) The employer may send a representative to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.618(b).

**§ 10.622 May a claimant withdraw a request for or postpone a hearing?**

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, but such requests should be made at the time of the original request; scheduling is at the sole discretion of the hearing representative, and is not reviewable. Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant, the oral hearing cannot be postponed at the claimant's request for any reason, unless the hearing representative can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly. In the alternative, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.

*Review by the Employees' Compensation Appeals Board (ECAB)*

**§ 10.625 What kinds of decisions may be appealed?**

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

**§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?**

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB.

## Subpart H—Special Provisions

*Representation*

**§ 10.700 May a claimant designate a representative?**

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her

interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this subpart or the FECA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

**§ 10.701 Who may serve as a representative?**

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, provided such representation would not conflict with any other provision of law, and no fee or gratuity is charged.

**§ 10.702 How are fees for services paid?**

A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee. Administrative costs (mailing, copying, messenger services, travel and the like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary. (Collecting a fee without this approval may constitute a misdemeanor under 18 U.S.C. 292.)

**§ 10.703 How are fee applications approved?**

(a) *Fee application.* (1) The representative must submit the fee application to the district office and/or the Branch of Hearings and Review, according to where the work for which the fee is charged was performed. The application shall contain the following:

(i) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(ii) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(2) An incomplete application will be returned with no further comment.

(b) *Approval where there is no dispute.* Where a fee application is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(2) of this section, the application is deemed approved.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submission, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors:

(i) Usefulness of the attorney's services;

(ii) The nature and complexity of the claim;

(iii) The actual time spent on development and presentation of the claim; and

(iv) Customary local charges for similar services.

(2) Where the claimant disputes the attorney's request and files an objection with OWCP, an appealable decision will be issued.

*Third Party Liability*

**§ 10.705 When must an employee or other FECA beneficiary take action against a third party?**

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name.

**§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?**

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

**§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be ''prosecuted''?**

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;

(b) Either initiate a lawsuit within the appropriate statute of limitations period or obtain a written release of this obligation from OWCP or SOL unless recovery is possible through a negotiated settlement prior to filing suit;

(c) Refuse to settle or dismiss the case for any amount less than the amount necessary to repay OWCP's refundable disbursements, as defined in § 10.714, without receiving permission from OWCP or SOL;

(d) Provide periodic status updates and other relevant information in response to requests from OWCP or SOL;

(e) Submit detailed information about the amount recovered and the costs of the suit on a ''Statement of Recovery'' form approved by OWCP; and

(f) Pay any required refund.

**§ 10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?**

When a FECA beneficiary refuses a request to either assign a claim or prosecute a claim in his or her own name, OWCP may determine that he or she has forfeited his or her right to all past or future compensation for the injury with respect to which the request is made. Alternatively, OWCP may also suspend the FECA beneficiary's compensation payments until he or she complies with the request.

**§ 10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?**

If a beneficiary consults an attorney and is informed that a suit for damages against a third party for the injury or death for which benefits are payable is unlikely to prevail or that the costs of such a suit are not justified by the potential recovery, he or she should request that OWCP or SOL release him or her from the obligation to proceed. This request should be in writing and provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

**§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?**

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

**§ 10.711 How much of any settlement or judgment must be paid to the United States?**

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The U.S. shares in the litigation expense by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OWCP:

(1) Determine the gross recovery as set forth in § 10.712;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from the gross recovery (Subtotal A);

(3) Subtract the costs of litigation, as allowed by OWCP or SOL (Subtotal B);

(4) Subtract one fifth of Subtotal B from Subtotal B (Subtotal C);

(5) Compare Subtotal C and the refundable disbursements as defined in § 10.714. Subtotal D is the lower of the two amounts.

(6) Multiply Subtotal D by a percentage that is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, to determine the government's allowance for attorney's fees, and subtract this amount from Subtotal D.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal C, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits;

(2) If Subtotal C is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal C.

(c) An example of how these calculations are made follows. In this example, a federal employee sues another party for causing injuries for which the employee has received $22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives $100,000, all of which was for his injury. The injured worker paid attorney's fees of $25,000 and costs for the litigation of $3,000.

| | |
|---|---|
| (1) Gross recovery | $100,000 |
| Attorney's fees | −25,000 |
| (2) Subtotal A | 75,000 |
| (3) Costs of suit | −3,000 |
| Subtotal B | −72,000 |
| One-fifth of Subtotal B | −14,400 |
| (4) Subtotal C | 57,600 |
| Refundable Disbursement | 22,000 |
| (5) Subtotal D (lower of Subtotal C or refundable disbursements) | 22,000 |
| (6) Government's allowance for attorney's fees [25,000/100,000×22,000] | −5,500 |
| (Attorney's fees divided by gross recovery then multiplied by Subtotal D) Refund to the United States | 16,500 |
| (7) Credit against future benefits [57,600−22,000] (Subtotal C minus refundable disbursements) | 35,600 |

**§ 10.712 What amounts are included in the gross recovery?**

(a) When a settlement or judgment is paid to, or for, one individual, the entire amount, except for the portion representing damage to real or personal property, is reported as the gross recovery. If a settlement or judgment is paid to or for more than one individual or in more than one capacity, such as a joint payment to a husband and wife for personal injury and loss of consortium or a payment to a spouse representing both loss of consortium and wrongful death, the gross recovery to be reported is the amount allocated to the injured employee. If a judge or jury specifies the percentage of a contested verdict attributable to each of several plaintiffs, OWCP or SOL will accept that division.

(b) In any other case, where a judgment or settlement is paid to or on behalf of more than one individual, OWCP or SOL will determine the appropriate amount of the FECA beneficiary's gross recovery and advise the beneficiary of its determination. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause for a different allocation. Whether to accept a specific allocation is at the discretion of SOL or OWCP.

**§ 10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?**

In this situation, the gross recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

**§ 10.714 What amounts are included in the refundable disbursements?**

The refundable disbursements of a specific claim consist of the total money paid by OWCP from the Employees' Compensation Fund with respect to that claim to or on behalf of a FECA beneficiary, less charges for any medical file review (i.e., the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the FECA beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the FECA by the employing agency or at the employing agency's cost.

**§ 10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?**

If the refund due to the United States is not submitted within 30 days of receiving a request for payment from SOL or OWCP, interest shall accrue on the refund due to the United States from the date of the request. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the request for payment is sent). Waiver of the collection of interest shall be in accordance with the provisions of the Department of Labor regulations on Federal Claims Collection governing waiver of interest, 29 CFR 20.61.

**§ 10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?**

If the required refund is not paid within 30 days of the request for payment, OWCP can, in its discretion, collect the refund by withholding all or part of any payments currently payable to the beneficiary under the FECA with respect to any injury. The waiver provisions of §§ 10.432 through 10.440 do not apply to such determinations.

**§ 10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?**

Since an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA, any recovery in a suit alleging such an injury is treated as a gross recovery that must be reported to OWCP or SOL.

**§ 10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?**

Since payments received by a FECA beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an injury covered by the FECA, they are not considered a gross recovery covered by section 8132 that requires filing a Statement of Recovery and paying any required refund.

**§ 10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?**

(a) All wounds, diseases or other medical conditions accepted by OWCP in connection with a single claim are treated as the same injury for the purpose of computing any required refund and any credit against future benefits in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an injury covered under the FECA will be treated as a separate injury for purposes of section 8132.

(b) If an injury covered under the FECA is caused under circumstances creating a legal liability in more than one person, other than the United States, to pay damages, OWCP or SOL will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single FECA claim. If such an attribution is both practicable and equitable, as determined by OWCP or SOL, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the refund and credit owed to the United States under section 8132.

*Federal Grand and Petit Jurors*

**§ 10.725 When is a federal grand or petit juror covered under the FECA?**

(a) Federal grand and petit jurors are covered under the FECA when they are in performance of duty as a juror, which includes that time when a juror is:

(1) In attendance at court pursuant to a summons;

(2) In deliberation;

(3) Sequestered by order of a judge; or

(4) At a site, by order of the court, for the taking of a view.

(b) A juror is not considered to be in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

**§ 10.726 When does a juror's entitlement to disability compensation begin?**

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation does not commence until the day after the date of termination of service as a juror.

**§ 10.727 What is the pay rate of jurors for compensation purposes?**

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for Grade GS–2 of the General Schedule unless his or her actual pay as an ''employee'' of the United States while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

*Peace Corps Volunteers*

**§ 10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?**

(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad shall be presumed to have been sustained in the performance of duty, and any illness contracted during such time shall be presumed to be proximately caused by the employment. However, this presumption will be rebutted by evidence that:

(1) The injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or

(2) The illness is shown to have preexisted the period of service abroad; or

(3) The injury or illness claimed is a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.

(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted as provided by paragraph (a) of this section, the claimant has the burden of proving by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated, accelerated or precipitated by factors of Peace Corps service.

**§ 10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?**

The pay rate for these claimants is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

*Non-Federal Law Enforcement Officers*

**§ 10.735 When is a non-federal law enforcement officer covered under the FECA?**

(a) A law enforcement officer (officer) includes an employee of a state or local government, the governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521–535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not ''employees'' under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

**§ 10.736 What are the time limits for filing a claim?**

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

**§ 10.737 How is a claim filed, and who can file a claim?**

A claim for injury or occupational disease should be filed on Form CA–721; a death claim should be filed on Form CA–722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

**§ 10.738 Under what circumstances are benefits payable?**

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a federal crime. However, either an actual federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential federal crime was in progress or had already been committed. The actual or potential federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a federal crime, there must be objective evidence that a federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

**§ 10.739 What kind of objective evidence of a potential federal crime must exist for coverage to be extended?**

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a federal criminal or prevention of a federal crime.

**§ 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?**

(a) Where an officer is detailed by a competent state or local authority to assist a federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

**§ 10.741 How are benefits calculated?**

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension and disability funds, state workers' compensation payments, Public Safety Officers' Benefits Act payments, and state and local lump sum payments. Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits,

compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).

## Subpart I—Information for Medical Providers

*Medical Records and Bills*

### § 10.800 What kind of medical records must providers keep?

Agency medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the FECA so they can supply OWCP with a history of the injury, a description of the nature and extent of injury, the results of any diagnostic studies performed, the nature of the treatment rendered and the degree of any impairment arising from the injury.

### § 10.801 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 10.800. The physician or provider shall itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500, (for professional charges), the UB–92 (for hospitals), the Universal Claim Form (for pharmacies), or other form as warranted, and submit the form promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly to OWCP on the Uniform Bill (UB–92). The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear in the UB–92.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this paragraph. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the ''National Uniform Billing Data Elements Specifications'', current edition. The provider shall also furnish the diagnostic code using the ICD–9-CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form and submit them promptly to OWCP. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) Bills submitted by providers must: be itemized on the Health Insurance Claim Form (for physicians), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, OWCP may return the bill to the provider for correction and resubmission.

### § 10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or dental services, supplies or appliances due to an injury sustained in the performance of duty, he or she may submit an itemized bill on the Health Insurance Claim Form, HCFA 1500 or OWCP 1500, together with a medical report as provided in § 10.800, to OWCP for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If services were provided by a hospital, pharmacy or nursing home, the employee should submit the bill in accordance with the provisions of § 10.801(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) OWCP will not accept copies of bills for reimbursement unless they bear the original signature of the provider,

with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.805.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by the Director's schedule. In this instance, OWCP shall advise the provider of the maximum allowable charge for the service in question and allow the provider the opportunity to refund to the employee, or credit to the employee's account the amount paid by the employee which exceeds the maximum allowable charge, or request reconsideration of the fee determination as provided by § 10.812.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the date of this notification by OWCP, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP shall initiate exclusion procedures as provided by § 10.815.

(g) After notification as provided in paragraph (e) of this section, OWCP may make reasonable reimbursement to the employee, based on a review of the facts and circumstances of the case, if the provider does not refund or credit to the employee's account the amount of money paid in excess of the charge allowed by OWCP.

**§ 10.803 What are the time limitations on OWCP's payment of bills?**

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

*Medical Fee Schedule*

**§ 10.805 What services are covered by the OWCP fee schedule?**

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for work-related injuries shall not exceed a maximum allowable charge for such service as determined by the Director, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

**§ 10.806 How are the maximum fees defined?**

For professional medical services, the Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by Health Care Financing Administration Common Procedure Coding System/ Current Procedural Terminology (HCPCS/CPT) code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

**§ 10.807 How are payments for particular services calculated?**

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The ''locality'' which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(b) The Director shall assign the relative value units (RVUs) published by HCFA to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any RVUs that he or she considers appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA and as updated or revised by HCFA from time to time. The Director will devise conversion factors for each category of service, and in doing so may adapt HCFA conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988 (W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

**§ 10.808 Does the fee schedule apply to every kind of procedure?**

Where the time, effort and skill required to perform a particular procedure varies widely from one occasion to the next, the Director may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

**§ 10.809 How are payments for medicinal drugs determined?**

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. The Director will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

**§ 10.810 How are payments for inpatient medical services determined?**

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by the HCFA in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by HCFA in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by HCFA to determine the specific rate for a hospital discharge under their PPS. The Director may devise pricer adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from HCFA's PPS on consideration of detailed medical reports and other evidence.

(4) The Director shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when he or she deems it necessary or appropriate.

(b) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when he or she deems it necessary or appropriate.

**§ 10.811 When and how are fees reduced?**

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

**§ 10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?**

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the OWCP district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board-certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances which will justify reevaluation of the paid amount.

(2) A list of OWCP district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, D. C. 20210. Within 30 days of receiving the request for reconsideration, the OWCP district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the OWCP district office issues a decision which continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the OWCP district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

**§ 10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?**

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this subpart shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge ''substantially in excess of such provider's customary charges'' for the purposes of § 10.815(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 10.815(h).

*Exclusion of Providers*

**§ 10.815 What are the grounds for excluding a provider from payment under the FECA?**

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under the FECA if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the FECA, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this subpart containing charges which the Director finds to be substantially in excess of such provider's customary charges, unless the Director finds there is good

cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart paid by OWCP;

(f) Failed, neglected or refused on three or more occasions during a twelve-month period, to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by the FECA and § 10.800 of this subpart;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

**§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?**

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may be by a copy thereof authenticated by the seal of the court or agency concerned.

**§ 10.817 When are OWCP's exclusion procedures initiated?**

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.815, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, ''Regional Director'' may include any officer designated to act on his or her behalf.

**§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?**

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to provide;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

**§ 10.819 What requirements must the provider's reply and OWCP's decision meet?**

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 10.820. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

**§ 10.820 How can an excluded provider request a hearing?**

A request for a hearing shall be sent to the official representative named under § 10.818(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

**§ 10.821 How are hearings assigned and scheduled?**

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate ''all issues'' for purposes of

hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

**§ 10.822 How are subpoenas or advisory opinions obtained?**

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

**§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?**

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

**§ 10.824 How can a party request review by the Director of the administrative law judge's recommended decision?**

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

**§ 10.825 What are the effects of exclusion?**

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) All federal employers;

(3) The HCFA;

(4) The State or Local authority responsible for licensing or certifying the excluded party; and

(5) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to have known of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

**§ 10.826 How can an excluded provider be reinstated?**

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 10.816, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Federal Employees' Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

2. It is proposed that part 25 be revised to read as follows:

## PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NONCITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

### Subpart A—General Provisions



### Subpart B—The Special Schedule of Compensation



### Subpart C—Extensions of the Special Schedule of Compensation



**Authority:** 5 U.S.C. 301, 8137, 8145 and 8149; 1946 Reorganization Plan No. 2, sec. 3, 3 CFR 1943–1948 Comp., p. 1064; 60 Stat. 1095; Reorganization Plan No. 19 of 1950, sec. 1, 3 CFR 1943–1953 Comp., p. 1010; 64 Stat. 1271; Secretary's Order 5–96, 62 FR 107.

## Subpart A—General Provisions

### § 25.1 How are claims of federal employees who are neither citizens nor residents adjudicated?

This part describes how OWCP pays compensation under the FECA to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, as well as to any dependents of such employees. It has been determined that the compensation provided under the FECA is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom or otherwise, in areas outside the United States, any territory or Canada. Therefore, with respect to the claims of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the regulations in this part shall apply.

### § 25.2 In general, what is the Director's policy regarding such claims?

(a) Pursuant to 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in areas outside the United States, any territory or Canada shall, effective as of December 7, 1941 and as recognized by the Director, be adopted and apply in the cases of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, unless a special schedule of compensation for injury or death has been established under this part for the particular locality, or for a class of employees in the particular locality.

(b) The benefit provisions adopted under paragraph (a) of this section are those dealing with money payments for injury and death (including medical benefits), as well as those dealing with services and purposes forming an integral part of the local plan, provided they are of a kind or character similar to services and purposes authorized by the FECA.

(1) Procedural provisions, designations of classes of beneficiaries in death cases, limitations (except those affecting amounts of benefit payments), and any other provisions not directly affecting the amounts of the benefit payments, in such local plans, shall not apply, but in lieu thereof the pertinent provisions of the FECA shall apply, unless modified in this section.

(2) However, the Director may at any time modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(c) Compensation in all cases of such employees paid and closed prior to [insert the effective date of the final rule] shall be deemed compromised and paid under 5 U.S.C. 8137. In all other cases, compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Persons employed in a country or area having no well-defined workers' compensation benefits structure shall be accorded the benefits provided—either by local law or special schedule—in a nearby country as determined by the Director. In selecting the benefit structure to be applied, equity and administrative ease will be given consideration, as well as local custom.

(e) Compensation for disability and death of non-citizens outside the United States under this part, whether paid under local law or special schedule, shall in no event exceed that generally payable under the FECA.

### § 25.3 What is the authority to settle and pay such claims?

In addition to the authority to receive, process and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority to make lump sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall deem such settlement to be for the best interest of the United States, and to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to questions of fact or law. The Director shall, in instructions to the particular representative concerned, establish such procedures in respect to action under this section as he or she may deem necessary, and may specify the scope of any administrative review of such action.

### § 25.4 What type of evidence is required to establish a claim under this part?

Claims of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which claim is made:

(a) Appropriate certification by the Federal employing establishment; or

(b) An armed service's casualty or medical record; or

(c) Verification of the employment and casualty by military personnel; or

(d) Recommendation of an armed service's ''Claim Service'' based on investigations conducted by it.

**§ 25.5 What special rules does OWCP apply to claims of third and fourth country nationals?**

(a) *Definitions.* A ''third country national'' is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States. A ''fourth country national'' is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but who otherwise meets the definition of third country national. ''Benefits applicable to local hires'' are the benefits provided in this part by local law or special schedule, as determined by the Director. With respect to a United States territory or possession, ''local law'' means only the law of the particular territory or possession.

(b) *Benefits payable.* Third and fourth country nationals shall be paid the benefits applicable to local hires in the country of hire or the place of employment, whichever benefits are greater, provided that all benefits payable on account of one injury must be paid under the same benefit structure.

(1) Where no well-defined workers' compensation benefits structure is provided in either the country of hire or the place of employment, the provisions of § 25.2(d) shall apply.

(2) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his or her home country.

**§ 25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?**

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth or trust territory will receive the full benefits of the FECA, as amended, except that the application of the minimum benefit provisions provided therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

## Subpart B—The Special Schedule of Compensation

**§ 25.100 How is compensation for disability paid?**

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In cases of permanent total disability, 66⅔ percent of the monthly pay during the period of such disability.

(b) *Temporary total disability.* In cases of temporary total disability, 66⅔ percent of the monthly pay during the period of such disability.

(c) *Permanent partial disability.* In cases of permanent partial disability, 66⅔ percent of the monthly pay, for the following losses and periods:

(1) Arm lost: 280 weeks' compensation.

(2) Leg lost: 248 weeks' compensation.

(3) Hand lost: 212 weeks' compensation.

(4) Foot lost: 173 weeks' compensation.

(5) Eye lost: 140 weeks' compensation.

(6) Thumb lost: 51 weeks' compensation.

(7) First finger lost: 28 weeks' compensation.

(8) Great toe lost: 26 weeks' compensation.

(9) Second finger lost: 18 weeks' compensation.

(10) Third finger lost: 17 weeks' compensation.

(11) Toe, other than great toe, lost: 8 weeks' compensation.

(12) Fourth finger lost: 7 weeks' compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(16) Binocular vision or percent of vision: Compensation for loss of binocular vision, or for 80 percent or more of the vision of an eye shall be the same as for the loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(18) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(20) Consecutive awards: In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs (c)(1) through (19) of this section, but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (c)(17) of this section shall apply.

(21) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(22) Compensation under paragraphs (c)(1) through (21) of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(d) *Temporary partial disability.* In cases of temporary partial disability, during the period of disability that proportion of compensation for temporary total disability, as determined under paragraph (b) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

**§ 25.101 How is compensation for death paid?**

If the disability causes death, the compensation shall be payable in the amount and to or for the benefit of the persons, determined as follows:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding $200.

(b) To the surviving spouse, if there is no child, 35 percent of the monthly pay until his or her death or remarriage.

(c) To the surviving spouse, if there is a child, the compensation payable under paragraph (b) of this section, and in addition thereto 10 percent of the monthly wage for each child, not to exceed a total of 66⅔ percent for such surviving spouse and children. If a child has a guardian other than the surviving spouse, the compensation payable on account of such child shall be paid to such guardian. The compensation of any child shall cease when he or she dies, marries or reaches the age of 18 years, or if over such age and incapable of self-

support, becomes capable of self-support.

(d) To the children, if there is no surviving spouse, 25 percent of the monthly pay for one child and 10 percent thereof for each additional child, not to exceed a total of 66⅔ percent thereof, divided among such children share and share alike. The compensation of each child shall be paid until he or she dies, marries or reaches the age of 18, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(e) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his or her death and the other is not dependent to any extent, 25 percent of the monthly pay; if both are wholly dependent, 20 percent thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no surviving spouse or child, but if there is a surviving spouse or child, there shall be paid so much of such percentages for a parent or parents as, when added to the total of the percentages of the surviving spouse and children, will not exceed a total of 66⅔ percent of the monthly pay.

(f) To the brothers, sisters, grandparents and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 percent of the monthly pay to such dependent; if more than one are wholly dependent, 30 percent of such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 percent of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no surviving spouse, child or dependent parent. If there is a surviving spouse, child or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the surviving spouse, children and dependent parents, will not exceed a total of 66⅔ percent of such pay.

(g) The compensation of each beneficiary under paragraphs (e) and (f) of this section shall be paid until he or she, if a parent or grandparent, dies, marries or ceases to be dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such person, for such person, as the Director in his or her discretion shall determine.

(h) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to continuing compensation in the same case shall be adjusted, so that the continuing compensation shall be at the same rate such person would have received had no award been made to the person whose compensation ceased.

(i) In cases where there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as provided in this section would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

#### § 25.102 What general provisions does OWCP apply to the Special Schedule?

(a) The definitions of terms in the FECA, as amended, shall apply to terms used in this subpart.

(b) The provisions of the FECA, unless modified by this subpart or otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the FECA, as amended or supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

### Subpart C—Extensions of the Special Schedule of Compensation

#### § 25.200 How is the Special Schedule applied in the Republic of the Philippines?

(a) *Modified special schedule of compensation.* Except for injury or death of direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System, the special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the special schedule as modified in this section for

(i) All awards not paid in full before July 1, 1969, and

(ii) Any award paid in full prior to July 1, 1969: Provided, that application for adjustment is made, and the adjustment will result in additional benefits of at least $10. In the case of injuries or death occurring on or after December 8, 1941 and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are $50 and $4,000, respectively.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable classes are entitled to share equally):

(1) Surviving spouse and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate

limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to regulations in this section by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

### § 25.201 How is the Special Schedule applied in Australia?

(a) The special schedule of compensation established by subpart B of this part shall apply in Australia with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in all cases of injury (or death from injury) which occurred between December 8, 1941 and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph, and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of $4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of $50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930–1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in all such cases, occurring on and after such date: Provided, that the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the FECA.

### § 25.202 How is the Special Schedule applied for Japanese seamen?

(a) The special schedule of compensation established by subpart B of this part shall apply as of November 1, 1971, with the modifications or additions specified in paragraphs (b) through (i) of this section, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) *Temporary total disability.* Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) *Temporary partial disability.* Weekly compensation shall be paid at 75 percent of the weekly loss of wage-earning capacity.

(d) *Permanent total disability.* Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) *Permanent partial disability.* (1) The provisions of § 25.100 shall apply to the types of permanent partial disability listed in paragraphs (c)(1) through (19) of that section: Provided that weekly compensation shall be paid at 75 percent of the weekly wage rate and that the number of weeks allowed for specified losses shall be changed as follows:

(i) Arm lost: 312 weeks.
(ii) Leg lost: 288 weeks.
(iii) Hand lost: 244 weeks.
(iv) Foot lost: 205 weeks.
(v) Eye lost: 160 weeks.
(vi) Thumb lost: 75 weeks.
(vii) First finger lost: 46 weeks.
(viii) Second finger lost: 30 weeks.
(ix) Third finger lost: 25 weeks.
(x) Fourth finger lost: 15 weeks.
(xi) Great toe lost: 38 weeks.
(xii) Toe, other than great toe lost: 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability in paragraph (d) of this section which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) *Death.* If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) *Burial allowance.* $1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible survivors, actual expenses may be paid or reimbursed, up to $1,000.

(h) *Method of payment.* Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) *Maxima.* In all cases, the maximum weekly benefit shall be $130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be $40,000.

(j) *Prior injury.* In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accordance with regulations previously promulgated, contained in the 20 CFR, parts 1 to 399, edition revised as of January 1, 1971.

### § 25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, to injury or death occurring on or after July 1, 1971 in the Territory of Guam to non-resident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. However, the Director may, in his or her discretion, adopt the benefit features

and provisions of local workers' compensation law as provided in subpart A of this part, or substitute the special schedule in subpart B of this part or other modifications of the special schedule in this subpart C, if such adoption or substitution would be to the advantage of the employee or his beneficiary. This schedule shall not apply to any employee who becomes a permanent resident in the Territory of Guam prior to the date of his or her injury or death.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Beneficiaries of death benefits shall be determined in accordance with the laws or customs of the country of recruitment.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $24,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $70.

(j) *Method of payment.* Compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to the regulations in this section by:

(1) Reapportioning death benefits for the sake of equity.

(2) Excluding from consideration potential beneficiaries of a deceased employee who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the employee or his or her beneficiary(ies).

Signed at Washington, D.C., this 28th day of November, 1997.

**Alexis M. Herman,**

*Secretary of Labor.*

**Bernard E. Anderson,**

*Assistant Secretary for Employment Standards Administration.*

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## Part III

# Department of Health and Human Services

### Health Care Financing Administration

**42 CFR Part 483**

**Medicare and Medicaid; Resident Assessment in Long Term Care Facilities; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 483**

**[HCFA–2180–F]**

**RIN 0938–AE61**

## Medicare and Medicaid; Resident Assessment in Long Term Care Facilities

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a resident assessment instrument for use by long term care facilities participating in the Medicare and Medicaid programs when conducting a periodic assessment of a resident's functional capacity. The resident assessment instrument (RAI) consists of a minimum data set (MDS) of elements, common definitions, and coding categories needed to perform a comprehensive assessment of a long term care facility resident. A State may choose to use the Federally established resident assessment instrument or an alternate instrument that is designed by the State and approved by us. These regulations establish guidelines for use of the data set and designation of the assessment instrument.

The provisions contained in these regulations implement statutory requirements. The resident assessment instrument is intended to produce a comprehensive, accurate, standardized, reproducible assessment of each long term care facility resident's functional capacity.

**EFFECTIVE DATE:** Except for §§ 483.20(f) and 483.315(h), these regulations are effective March 23, 1998. Sections 483.20(f) Facility computerization requirements and 483.315(h) State computerization requirements are effective June 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** Cindy Hake, (410) 786–3404.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 28, 1992, we published in the **Federal Register**, at 57 FR 61614, a proposed rule with an opportunity for public comment, ''Resident Assessment in Long Term Care Facilities,'' which established a resident assessment instrument that all long term care facilities participating in the Medicare and Medicaid programs must use when conducting an assessment of a resident's functional capacity. We proposed that a State may choose to use the Federally established resident assessment instrument or an alternate instrument that is designed by the State and approved by us. We proposed that a facility must enter information from the resident assessment into a computer, in accordance with HCFA-specified formats. At least monthly, the facility must transmit electronically the information contained in each resident assessment to the State.

The resident assessment instrument would consist of a minimum data set (MDS) of screening and assessment elements, including common definitions and coding categories for use by a facility in performing a comprehensive assessment of a long term care facility resident. In addition to containing identifying information such as name, birthdate, and occupation, the MDS consists of standardized items that assess, for example, a resident's communication patterns, cognitive patterns, physical functioning and structural problems, health conditions, and medications. The proposed rule established guidelines for use of the data set, and designated one or more assessment instruments that a State may require a facility to use.

We proposed to add a new § 483.315, which would require a State to specify for use in long term care facilities within the State either the HCFA-designated resident assessment instrument or an alternate instrument. The State would request and receive approval from us before implementing or modifying an alternate instrument. The uniform MDS was included in § 483.315(b). We also provided as attachments to the regulations the utilization guidelines for the resident assessment instrument, MDS common definitions, and resident assessment protocols (RAPs).

### II. Analysis of and Responses to Public Comments

We received 146 timely letters in response to our December 28, 1992, proposed regulation. Most were from provider organizations and nursing home staff. We also heard from consumer organizations, professional organizations, nursing home residents and their families, and State and Federal agencies.

Prior to addressing comments on specific regulatory sections, we will provide a summary of public comments on major topics, and discuss some of the general issues raised by these regulations (in the order in which those issues appeared in the preamble to the proposed rule).

**Summary of Public Comments**

*Summary of Public Comments on MDS*

During the public comment period, respondents suggested over 70 different additions to the MDS. Many commenters suggested modifying items to increase clarity. For example, the item ''wheeled self'' was divided into two items, ''wheeled self on unit'' and ''wheeled self off unit'' to further differentiate a resident's capabilities. Commenters also suggested the addition of items that provided information needed by clinical staff caring for residents. Data suggest that nursing home residents experience pain on a regular basis, but the MDS items associated with pain did not differentiate the intensity and location of pain (chest, joint, other). We expanded MDS items associated with pain to assist clinicians in determining the nature and scope of pain for care planning purposes.

There was a concern expressed by commenters that the MDS, as originally designed, could not be used for determining nursing home payment or monitoring quality of care, either at the resident and or the facility level. To address this concern, we added items to the MDS that are needed to support a case-mix classification system for long term care facility payment known as, Resource Utilization Groups III, which is a mechanism for determining the level of resources necessary to care for an individual based upon his clinical characteristics as measured by the MDS. This classification system was developed under the auspices of the HCFA-funded Multistate Nursing Home Case-mix and Quality demonstration, whose purpose is to develop, implement and evaluate a case-mix payment system for SNF services under Medicare. The original four States participating in the demonstration began using the MDS+ (an alternate RAI that consists of the original MDS, plus additional assessment items specified by the State for use in all Medicare and Medicaid-certified nursing homes in the State), based on the Resource Utilization Groups III classification system in their Medicaid programs in 1994, as have several other States subsequently.

Section 4432 of the Balanced Budget Act of 1997 (Public Law 105–33), amends section 1888 of the Social Security Act (the Act), by adding a new subsection (e). The Balanced Budget Act and the Prospective Payment System (PPS) will require national implementation in Fiscal Year 1998 of a casemix payment system for Medicare that is based on MDS data. The Secretary determines the manner and

time frames within which resident assessment data are collected at the State and national levels to develop and implement casemix payment rates. The resident assessment data submitted to the State is a resource upon which the Secretary can draw for development and implementation of the PPS system.

We added other items to the original MDS to ensure that key indicators of quality of care, (known as quality measures) could be derived from the MDS and monitored longitudinally at the resident and facility level. The addition of items needed to support payment and quality monitoring programs will also strengthen the clinical relevancy of the MDS by providing important information to facility staff about the resident's potential for achieving the highest level of functioning. One example of such items are nursing care interventions related to rehabilitation and restorative care for the resident, such as range of motion, training and skill practice in walking, transferring, eating, dressing/grooming, and communication.

Commenters were particularly concerned with the ability of the MDS to assist in assessing the quality of life for nursing home residents. Revisions we made within the section on mood and behavior, in particular, have the potential for providing important information regarding the resident's risk for depression, as well as the presence of depression. Nursing home residents have a high risk of developing depression, with clinical experts estimating that at least 60 percent of current nursing home residents have some level of depression. However, analysis of MDS records for a large group of residents showed that the mood and behavior items were checked for only 16 percent of the residents. We found that nursing homes that have clinical staff with expertise in this area identify more residents with mood and behavior problems. Concerned that residents with, or at risk of, depression may not be identified, we have modified the mood and behavior items to help facility staff identify objective behaviors frequently associated with depression. We also added a scale to measure the frequency with which these symptoms occur. An item indicating the use of a behavior management program was modified to allow the assessor to identify specific strategies that were being used with the resident to deal with mood and behavior symptoms.

Finally, commenters expressed concern that the MDS was not appropriate to use with some groups of nursing home residents, such as the non-elderly or short term stay populations. To better understand the changing nursing home population, we have added an item in Section P that identifies different populations often served by nursing homes (for example, pediatric resident, hospice care resident). To address commenters' concerns, we also added items focusing more on short-term nursing and therapy needs, and issues important to terminal residents, such as pain. We also expanded the item on discharge planning to assess the resident's potential for discharge, including the resident's desire to return to the community and the presence of a support person who is positive towards discharge. This item will also be useful in developing a RAP on discharge planning that was suggested by a number of commenters.

*Summary of Public Comments on Triggers*

Commenters believed that the trigger legend was too complex and needed to be simplified or eliminated. It is substantially revised, and we have reduced the number of triggers for particular RAPs. We have also eliminated the categories of automatic and potential triggers as this had not been well understood and sometimes led to unnecessary work by nursing home staff.

*Summary of Public Comments on the RAP Summary Form*

We revised the RAP Summary Form and accompanying instructions to reduce confusion regarding their use that was noted by commenters. Specifically, the revised form provides a column for indicating if the RAP was triggered. It provides more specific instruction and direction on the type of information that we would expect a facility to document for each triggered RAP, including rationale to support decision-making regarding whether to proceed with a care plan for a triggered RAP. Additionally, because we consider the RAPs part of the utilization guidelines for the MDS, we designated the RAP Summary form as Section V of the MDS. This will provide nursing home staff and surveyors with more complete information on resident care problems and outcomes. This will also permit surveyors to monitor the completion of the RAPs.

*Summary of Public Comments on RAPs*

Most of the commenters valued the RAPs as part of the RAI for improving the quality of care. A number of commenters indicated the need for the addition of new RAPs. Specifically, we received comments suggesting the creation of RAPs on discharge planning, pain, terminal care/imminent death, resident rights, bowel incontinence/constipation, abnormal lab values, and foot care. A new RAP on discharge planning is already developed and we expect to develop other RAPs during 1997.

There was also concern that many of the current RAPs do not address the needs of short-stay residents. Work is currently in progress and we expect to publish revised RAP Guidelines that address the needs of this population in 1997.

*Comments on MDS and RAPS*

*Comment:* Most commenters asserted that the original MDS did not provide enough information in some areas. These commenters noted that the areas of nursing diagnosis and medical needs, and certain information needed for care planning, were lacking. Some commenters stated that professional nurses are knowledgeable regarding areas that are not addressed on the MDS and automatically incorporate them into the assessment and care plan. Another commenter pointed out that the MDS+ includes additional information that is helpful in care planning.

*Response:* As discussed elsewhere, we have added a number of items that nursing home staff have identified as useful in assessing a resident's functional capability and medical problems. We have also clarified items that had been confusing for facility staff in the past. Some of the items added to the MDS were previously on the MDS+. We believe that the MDS captures information on most of the areas of concern in assessing nursing home residents. While we agree that there are additional items that would provide necessary information for nursing home staffs' use in care planning, it is not possible for us to design an instrument that covers every potential item that a nursing home needs to know to provide care to residents. The RAI is not intended to replace or substitute for a resident's full clinical record. The facility should document in those clinical records pertinent information whether or not required by the RAI. A facility is responsible for providing care that is necessary to assist a resident in attaining or maintaining his or her highest practicable well-being, regardless of whether the care areas are captured on the MDS. A facility may document additional information regarding the resident's status wherever it chooses in the resident's clinical records.

*Comment:* One commenter urged that we move cautiously in adding any other

data elements to the MDS, explaining that some States with a non-MDS based case-mix system are having difficulty merging the MDS and their reimbursement system. Other commenters disagreed regarding the need to add items to the MDS at this time. They thought that we should maintain the status quo until the industry and surveyors have more fully understood and integrated the current instrument into their way of doing business. Commenters mentioned that the MDS is a screening tool that already contains most of the relevant items. One commenter stated that the original MDS underwent extensive scrutiny and testing during its development and should be kept as is for at least 10 years in order to maintain consistency for providers, computer companies, research, and case-mix reimbursement.

*Response:* We disagree regarding the need to maintain the MDS for the next several years in the form it was originally issued in 1990 (not as revised in 1995 in version 2.0). Many of the changes in version 2.0 of the MDS were made to address areas that had been particularly troublesome or poorly understood by clinicians responsible for completing the RAI. Moreover, changes in the MDS have not been frequent enough to cause significant disruption for facilities. Nearly all States began to require use of the original RAI in late 1990 or early 1991, and most did not require facilities to use the new RAI until January 1996 (with some States deferring that requirement to 1997). This means that the original RAI was in place for nearly 5 years before facilities were expected to change to the new instrument. Additionally, it is less burdensome and confusing to incorporate necessary improvements in the RAI at this time than it will be after implementation of requirements in this regulation for facility computerization of MDS information. Overall, the advantages of implementing version 2.0 of the RAI in 1996 far outweigh maintenance of the original assessment system.

If clinically warranted and supported by affected parties, we anticipate reviewing the MDS every 3 to 5 years to determine whether it needs to be revised, and sponsoring the development of a new version of the RAI approximately every 5 years. For all RAI refinement activities, we will seek the input of interested and affected parties.

*Comment:* Several other commenters expressed the belief that we should conduct more RAI training on a national level and institute a facility support effort, rather than making major changes to the instrument.

*Response:* We support the need for more RAI training at all levels and have numerous activities underway to strengthen the knowledge of facility staff and surveyors about comprehensive assessment and its linkage to resident care planning and quality of care. The need for additional RAI training has been consistently supported by the States, provider, consumer and professional associations with which we have worked to develop version 2.0 of the RAI. In 1995, we published a new edition of the Resident Assessment Instrument User's Manual for version 2.0 of the RAI that contains new information on the use of the RAPs and linking the RAI to care plans. We have developed ''train the trainer'' materials for use in both provider and surveyor training, and have begun a multi-year effort to develop educational materials for both providers and surveyors at both basic and advanced levels. We train all long term care facility surveyors on the RAI as part of our basic health surveyor course and have offered specialty courses on advanced resident assessment issues for surveyors as well as other State staff on a routine basis. We also offered a full-day program on resident assessment for all long term care facility surveyors during each of the HCFA regional conferences held during 1994. We are committed to working in partnership with providers and States to identify training needs and develop methods to facilitate the dissemination of consistent information and improve providers' use of the RAI in order to improve care outcomes for nursing home residents.

We believe that the industry also shares a responsibility to promote understanding of the RAI within facilities. Provider and professional organizations should offer sessions on resident assessment during their annual meetings or as special continuing education programs held throughout the course of the year. Our staff have participated in a number of national meetings and will continue to do so, as warranted. However, we believe that providers can best learn how to integrate RAI requirements into their daily practice from other providers who have implemented successful programs. We encourage the use of ''peer teaching'' programs in a variety of forms.

Beneficiary organizations have also played an important role in getting information on the RAI out to their members. The organizations have educated residents, families and ombudsmen regarding the role of resident assessment in quality care and how to use the RAI in care planning and conflict resolution. They also provided invaluable input in modifying the RAI.

As part of a contract with us, the Research Triangle Institute evaluated the extent to which facilities had implemented the RAI as well as the accuracy of the assessments being conducted. The Research Triangle Institute compared available assessment information for 23 specific assessment items in facilities both before and after the implementation of the RAI. Their sample consisted of over 260 facilities in 10 States. The Research Triangle Institute's results showed that:

- The percent of residents with no assessment information available for particular health status issues decreased on average by 81 percent;
- The percent of residents with accurate information documented on assessment items increased on average by 24 percent;
- The percent of residents with available information on all 23 items increased by 53 percent.

The Research Triangle Institute's study asserts that facilities are using the RAI, and that the RAI has resulted in the presence of more accurate information on which a facility can base its individualized care plans.

*Comment:* Commenters addressed the usefulness of the RAPs. Of those who responded to this request for comment, some said that the RAPs are useful and provide a structured framework for making sense of the MDS data through analysis, interpretation, and synthesis, believing that the RAPs tie the assessment process together. A consumer advocacy organization believed that the RAPs assist facility staff in learning causes of problems and identifying potential risks of decline that require further staff attention. A few said that the RAPs have improved the quality of care in nursing homes, or could with the appropriate training and administrative support.

*Response:* The RAPs are structured decision frameworks which contain guidelines for additional assessment of relevant resident attributes, risk factors, clinical history and other factors. They assist with clinical decision-making and help nursing home staff gather and analyze necessary information to develop an appropriate and individualized care plan.

The Guidelines section of each RAP assists staff to determine whether a problem exists and to identify relevant causal factors that affect the resident's condition. The RAPs also offer suggestions regarding how a facility can eliminate or minimize factors

contributing to the resident's problem, or how a facility can maximize a resident's strengths to achieve the highest practicable well-being. In this way, the RAPs help facility staff to develop an individualized care plan that meets the needs of the resident.

According to the report of the Research Triangle Institute's study, directors of nursing indicated the RAP triggers and guidelines were used routinely in over 90 percent of the facilities participating in the survey. Three-quarters of the directors of nursing stated that they believed that use of the RAP triggers had increased their facility's ability to identify residents' clinical problems, and two-thirds believed that using the RAPs had increased their facility's ability to identify residents' potential for rehabilitation improvement.

Among the 180 directors of nursing who thought the RAP triggers had increased identification of clinical problems, 45 percent were able to identify, without prompting, specific RAPs for which this increase was most pronounced. They most frequently cited cognitive loss/dementia (21 percent), ADL/functional rehabilitation potential (17 percent), delirium (16 percent), and communication (15 percent). Seventy-two percent of the directors of nursing interviewed stated that they did not believe it had been at all difficult for staff to provide necessary care in response to the newly identified clinical problems.

*Comment:* Some commenters believed that the RAPs are too prescriptive, and that we are ''legislating a cookbook approach.''

*Response:* RAPs function as resident-care related assessment tools rather than as clinical standards. RAPs do not contain prescriptive mandates to perform particular diagnostic tests or specialized assessments. Rather, RAPs lead facility staff through a process that enables them to gain a better understanding of the resident's status in a particular area.

For each resident, facility staff are required to make decisions regarding whether each RAP that triggered for that resident identifies a problem that requires care planning and intervention. Staff are required to proceed with a care plan only if clinically appropriate. As part of the RAP review process, facilities are required to document key information regarding a particular area or condition that includes objective findings and subjective complaints of the resident. Irrespective of RAI requirements, this type of information should be routinely assessed and documented by a facility as a part of good clinical practice. We do not require that a facility provide documentation that addresses each issue or question raised in a particular RAP guideline. We disagree that the RAPs represent a cookbook approach. The RAPs are tested assessment protocols that lead facility staff through a focused, logically progressive, clinical evaluation of the resident, relative to the particular area addressed by the RAP. The RAPs are not intended to prescribe courses of action for a facility. Rather, they provide a structured, problem-oriented framework for organizing MDS information and additional clinically relevant information that identifies medical problems. Upon completion of the RAPs, the facility staff will have:

- Identified clinical issues unique to the resident that may adversely affect his or her highest practicable level of well-being;
- Identified factors that place the resident's highest practicable functioning at risk;
- Considered whether the identified potential problems could be prevented or reversed, or risk factors minimized, and evaluated the extent to which the resident is able to attain a higher level of well-being and functional independence; and
- Evaluated ongoing care practices for the individual resident.

*Comment:* One commenter asked that we not mandate standards for care planning until there is better understanding of how the assessment process works. The commenter stated that a great deal of work needs to be done in setting up appropriate standards for care planning.

*Response:* Neither the RAPs, nor any other component of the RAI contains required standards of care or standards regarding the specific interventions and time frames for evaluation that must be present in care plans. As noted in the responses above, the RAPs are a structured framework that lead the facility through more in-depth assessment; they do not mandate a course of action for care planning. A facility has a great deal of flexibility in developing a care plan to meet a resident's individual needs.

*Comment:* Some who commented thought that the RAPs are too complex and difficult to use. One expressed the belief that the RAPs are not the only correct criteria for providing good care. Another pointed out that it has been a difficult learning process for facilities to understand that the MDS provides only raw data about a resident. Commenters recommended that some of the RAP items be included in the MDS as core assessment items.

*Response:* We agree that there has been a steep learning curve in terms of facilities' understanding of the RAPs and their ability to integrate them into day-to-day clinical process. Anecdotally, and more recently supported in the Research Triangle Institute study, facilities report that understanding and use of the RAPs has lagged well behind that of the MDS. Recognizing that the system required a major learning process, we have tried to address the RAPs in newer versions of our train-the-trainer courses offered annually for State RAI coordinators. Initially, our courses and materials focused on use of the MDS, then use of the RAPs, then integration of the RAI in care planning. Many States are still in the process of conducting training sessions for providers on use of the RAPs and care planning.

We also have made revisions to the RAP Summary form and our instructions regarding use of the RAPs in order to make them easier to understand and use. We will continue to refine our training products as well as evaluate facility staffs' ability to use the RAPs. If problems are identified, we are open to exploring ways to revise the RAP format or content in order to make the comprehensive assessment process more meaningful and productive for both facility staff and residents. We have incorporated some additional RAP triggers into the MDS and integrated assessment procedures contained in the RAP Guidelines throughout the instructions contained in the October 1995 edition of the RAI User's Manual.

*Comment:* A few commenters suggested that we make the RAPs available to facilities on request. Commenters asserted that often there is not a copy at the nurse's station.

*Response:* We agree that it is important for the RAPs to be available for staff use. In 1990, we sent information to each nursing home administrator regarding the RAI, and this information included a copy of the RAPs. Additionally, in 1990, we provided each State with a camera-ready copy of the original version of the RAI, and in 1995, we provided each State with a camera-ready copy of the new RAI, version 2.0. States were then responsible for providing facilities with a copy of the revised RAI including the RAPs.

We do not believe it is our responsibility to ensure that each nursing home currently has a copy of the RAPs. Facilities could request a copy from States, provider organizations or from other sources. However, we are exploring strategies to improve consistent distribution of RAI

information to nursing homes and ensure that clinical staff have access to the RAI User's Manual. We believe that for the RAPs to be used as intended, a copy of the RAPs should be available at each nursing station. States are responsible for communicating with facilities regarding the State-specified instrument and should, therefore, ensure that the facilities have the most current RAPs.

*Comment:* Some commenters wanted more flexibility in using the RAPs. They thought the RAPs should be adaptable, and, as professionals, facility staff should be able to pick and choose appropriate interventions from those suggested in the RAPs. Commenters also suggested that we make the RAPs optional. One commenter believed that the final product and process forces health care professionals into a format that stifles flexibility and interferes with the assessment and care planning process. Another suggestion was to allow a facility to use the RAPs as a flexible assistive device in care planning.

*Response:* We agree that facility staff are capable professionals and, as such, should be able to use the RAPs as is appropriate for each individual resident. This has always been our intent regarding their use. A facility may supplement the RAP assessment.

We believe that negative feelings regarding the utility of the RAPs are associated with lack of understanding of their use. As aforementioned, our training in the past did not focus on the RAPs. It has been our experience that facility staff who have been properly trained on the RAPs and integrated them into their clinical practice are convinced of their utility and positive effects on resident outcomes.

We do not believe that use of the RAPs should be optional, as they reflect necessary components of a comprehensive assessment. The RAPs represent a standard methodology for assessing and analyzing certain aspects of resident status. As part of the utilization guidelines for the RAI, the RAPs ensure consistent identification of medical problems and description of functional capabilities. They supplement the MDS to provide a standardized comprehensive assessment as is required by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

*Comment:* A few commenters suggested that we collaborate with the Department's Agency for Health Care Policy and Research and the industry to make the RAPs more germane to current industry practice, knowledge, and standards. One commenter wanted us to provide actual assessment tools and decision trees. A State provider association recommended that the RAI contain fewer RAPs, and furthermore, that we encourage facilities to develop their own triggers consistent with their care planning system.

*Response:* We collaborated extensively with the industry in developing the original 18 RAPs. The Department's Agency for Health Care Policy and Research was not yet in existence when we developed the original RAPs. In revising the RAPs, we will seek the input of interested and affected parties. Regarding the comment to develop assessment tools and decision trees, it would be difficult for us to develop decision trees that cover all possible scenarios. We do not wish to require such a methodology for completing the RAPs, as it would limit the flexibility of facilities. Most providers have tended to request that we develop more RAPs, rather than fewer. We have an ongoing process for developing new RAPs by clinical experts and validating the RAPs through testing. Also, we will review the content of the current RAPs to ensure that they contain information pertinent to the changing nursing home population. We do not anticipate issuing changes to the RAPs more frequently than once a year. States may, with our approval, revise their instruments as frequently as they deem necessary.

Triggers are risk factors or strengths that are indicative of a need for additional assessment. They do not automatically flag all problems worthy of care planning. The original triggers were developed using an expert consensus process and have been empirically validated. As such, it is inappropriate to suggest that a facility identify its own triggers based on their care planning systems. A facility may choose to add additional triggers, but must use at least the triggers identified in the State RAI. Facility staff may choose to assess residents using the RAPs even if the RAPs are not triggered.

*Comment:* Commenters suggested that we emphasize that the RAP process is not limited to the completion of the RAP Summary form. It includes the need to understand why the resident's condition triggered the RAP. The commenter also recommended that the RAI Training Manual contain a set of examples concerning how to use the information in the RAPs as part of the assessment process.

*Response:* We agree that the RAP process is not merely filling out the RAP Summary form, but is an important link between gathering assessment information and developing the appropriate care plan. In April 1992, we issued guidance to our regional offices and the States regarding the RAP process and other policy issues. We also shared this information with provider and consumer organizations. We have revised the RAI User's Manual to include this guidance and more specific instructions and examples, including RAP documentation and linkages to care planning. In October 1995, we distributed to States and associations ''train the trainer'' materials that included special course content for RAI surveyors and trainers. This included instructions on using the RAPs.

*Comment:* A commenter urged that we structure the RAPs so that they identify resident problems, complicating conditions and risk factors. The individual stated that some RAPs are currently in this structure and that this would make the RAPs easier to use.

*Response:* We believe that all RAPs presently contain this information. However, we are open to reviewing the RAPs to ensure that their format is consistent as a part of our ongoing RAP review and refinement process that we began in 1995.

*Comments on the Development of a Computerized National Data Base of Assessment Information*

*Comment:* Generally, commenters that supported the proposed requirement to computerize the MDS included State governments and national and State provider organizations. One State expressed the belief that computerization should be optional; they thought that States should determine when and whether participation is feasible given the States' prevailing conditions.

*Response:* We intend to implement a Federal process for assuring and improving quality in this country's nursing homes which relies on resident-level MDS assessment data reported by nursing homes participating in Medicaid and Medicare. Furthermore, our intention is to improve the Federal long term care survey process by using information derived from MDS data to identify potential quality problems within nursing facilities. The goals of this approach are twofold: to improve care received by beneficiaries by enhancing the timeliness and effectiveness of facility monitoring; and to better utilize survey agency resources by targeting potential problem facilities and by focusing onsite survey activities on specific problem areas within a facility.

We view the collection of MDS data and its use within a standardized survey process, as defined under our State

Operations Manual as being consistent with our current practices. Under the present survey process, the facility must submit specific information to the State survey agency, including data on resident census, facility staffing and ownership status. These facility-specific data, along with other information gathered by the survey team (for example, facility deficiency information) are currently maintained both at State agencies and within a national data base maintained by HCFA. In addition, survey teams review residents' clinical records and other resident-specific information. The submission and use of MDS data within the context of facility regulation is entirely consistent with existing practices and our obligation to collect the information necessary to ensure the quality of care provided to residents of Medicare and Medicaid certified long term care facilities.

Automated data collection is essential to meaningful analysis of the quantity of data collected. The MDS data system would allow us to expand our existing system for gathering data related to quality, and provide us with objective and detailed measures of the health status and care outcomes for residents of a facility. Coupled with facility characteristic and deficiency history data, we expect the MDS system will be more reliable and effective in supporting early identification of potential care problems and directing the survey process towards these identified problem areas.

In their roles as our agents for conducting regulatory survey and quality assurance activities, States will be required to process and analyze MDS data reported by facilities to meet the objectives stated above. MDS information collected by States will also be used to construct a national repository of MDS assessments. The national data base will be used to serve numerous functions: to study and refine the quality measures used to direct survey activities of State agencies (for example, to enhance the ability of these indicators to support survey targeting); to understand the characteristics of the nation's nursing home residents and the services they receive; to measure the impact of regulation and assist in the formulation of national health care policy; and to provide researchers with information needed to evaluate the outcomes of various types of care and to improve standards of clinical practice.

Our authority to require computerization of MDS information is based on our general authority to set health and safety standards for providers under sections 1819(f)(1) and 1919(f)(1) of the Act. We will use the computerized data to establish standards, evaluate a facility's compliance with these standards, and review the standards' effectiveness and their continued appropriateness. For example, analysis of MDS assessments within a national repository might indicate an increase in the number of residents suffering from depression. We may then develop standards to assist facility staff in detecting and treating the disease. Such a standard could then be evaluated and its effectiveness assessed by a process of continually re-analyzing the MDS data base for changes in the prevalence of this characteristic over time.

Computerization of RAI data is also consistent with our authority under sections 1819(h)(3) and 1919(h)(3) of the Act to perform, review and validate facility surveys. As is discussed above, we intend to revise the survey process to utilize computerized assessment data. The new process will be an information-based approach, oriented around quality measures derived from computerized MDS data, as well as other sources of information. Furthermore, sections 1819(g)(2)(A)(I) and 1919(g)(2)(A)(I) of the Act mandate that we subject facilities to a ''standard'' survey. The availability of computerized assessment data will improve our ability to make the survey process more standard and consistently implemented within the across the States.

Currently, part of the standard survey includes an assessment of the status of a sample of residents over time to determine whether the facility has assisted the residents to attain or maintain their highest practicable level of well-being. Computerized assessment data will be instrumental in that it will allow a complete monitoring of characteristics of ''all'' residents, including changes in their functional status over time. Furthermore, under the current survey process, we can only determine changes in resident status and a facility's relative success in maintaining resident well-being cross-sectionally during an annual onsite survey. MDS computerization, on the other hand, provides the ability to monitor resident functional status and other characteristics through a longitudinal process of continuous measurement.

These uses of computerized RAI data also provide justification for requiring computerization under our overall program supervision responsibilities and general rulemaking authority under section 1102 of the Act, to the extent that the information will be used for general monitoring of care and beneficiary needs. This computerized information will ensure that program standards set forth in sections 1819(b) and 1919(b) of the Act are met, that the program is being properly administered, and that beneficiaries are being served, as contemplated generally by the Act. We address elsewhere the further uses of the data for monitoring the Medicaid and Medicare programs.

In addition to the authority cited above, to the extent that the RAI data are collected solely for Medicaid purposes, section 1906(a)(6) of the Act requires State agencies to make reports as required by the Secretary. As discussed above, the RAI data are essential for the Secretary's evaluation and monitoring responsibilities under the Act.

We disagree with suggestions to offer States a choice to participate in the proposed national MDS data base for a number of reasons. First, the processes being regulated by Federal authority via State agencies (healthcare delivery and associated standards of care) do not have varying criteria from one State to the next. In other words, standards of medical care and health service delivery do not vary across States; health standards in New York are the same as those in Alaska. This commonality has reasonably led to the formulation of one national set of regulations to evaluate provider performance with respect to these common health standards. It is our belief that this standard regulatory approach is in the best interest of the nation's healthcare consumers with respect to both ensuring consistent delivery of services across States and with respect to the healthcare industry's reasonable expectation to operate under a single set of rules and requirements. Thus, as this standard approach to facility regulation evolves over time, with its specific objectives for continuous improvement and refinement, it is appropriate for us to require our agents (in other words, States) to adopt the standard processes and mechanisms required to consistently implement these new approaches.

Specifically, allowing States to choose not to adopt a standard system for MDS information will adversely affect our ability to meet the objectives for these data. The following goals cannot be met without consistent implementation of the MDS system and process standards across all States:

- The ability to construct a modern regulatory model provides a reliable and objective means of measuring facility performance. MDS information gathered and maintained by a standard system in each State provides an information structure capable of providing this

alternate approach to measuring quality and creates the foundation for an information-based regulatory model. The ability to successfully implement such an approach is directly tied to process standardization across States.

- If States are allowed to choose not to operate this standard system, then we would not be capable of developing and implementing a facility targeting system or, information-based survey process consistently across States; thus, at best, an environment would exist in which facilities in one State would be subject to different quality monitoring and survey approaches than facilities in a neighboring State.
- Our ability to build a centralized national repository to support our various objectives with respect to quality monitoring, policy, program and regulatory development and evaluation, and to facilitate healthcare research, is dependent on our ability to receive reliable and timely MDS information from each State. Without a standardized MDS collection system in each State, the development of this MDS repository will be severely limited if not entirely impossible due to the prohibitive costs associated with interacting with varying system implementations in each State. Furthermore, without full participation of each State in this program, the general representativeness and usefulness of the information in the data base will likely be skewed or biased, depending on which States choose to participate. This would affect the validity of the information and could seriously limit its application for health resource planning and research of value to State and Federal governments, providers and consumers.
- Finally, States will play a critical role in informing consumers in that States will make aggregate MDS information available. This information will allow potential residents or their family members to select a facility that may best suit their needs. Without a standard approach and system for developing these public information resources, consumers and advocacy groups will not have reliable, consistent and comparable information healthcare providers across States.

*Comment:* In commenting on what specific uses States would have for the computerized data, commenters discussed using the data in the nursing home survey process. One State believed that the data would assist State survey agencies to focus the survey process and set norms. A consumer advocacy organization pointed out that, based on the strengths and weaknesses of a facility, a State could individualize the composition of the survey team sent to evaluate the facility's regulatory compliance. In other words, the number and type of surveyors sent onsite would be based on the types of potential care problems identified at the facility. For example, if a facility had a high prevalence of antipsychotic drug use, the survey team would include a pharmacist. This approach has the dual benefits of maximizing limited survey agency resources by better targeting them against the most likely problem areas, and for minimizing the general invasiveness of the survey process within the facility by focusing the process on key problem areas.

The MDS data set provides objective and consistent measures of a number of facility care and outcome parameters. By comparing individual providers to ''gold standards'' and other peer group-based norms on each of these parameters, States can identify high and low facility performance outliers on measures associated with the quality of care and the quality of life for residents of these facilities. Commenters also suggested that the data could be used to replace some resident-level information currently collected during the survey process on a form called the Resident Census and Conditions of Residents (HCFA–672), as well as other reporting forms for State and Federal needs, which would reduce facility burden. The MDS assessment contains detailed resident characteristics that can be used to eliminate all other forms and resident-level data collected by facilities to meet State and Federal requirements. One commenter, however, believed that the information should not be collected by the survey agency and used for investigations or enforcement.

*Response:* As described in prior responses, MDS data will assist State survey agencies in a plethora of ways to achieve greater efficiencies in monitoring quality of care and ensuring the highest levels of quality of care and quality of life for residents of nursing facilities. These examples include:

- *Problem identification:* the capability to reliably target areas for investigation of potential resident care problems prior to and in support of the onsite survey process;
- *Survey targeting and scheduling:* the ability to determine survey frequency and scope based on specific indicators of potential care problems;
- Tailoring survey team composition to specific problem potentials in facilities to most efficiently use limited staff and resources. It is important to note that States currently are not prohibited from considering nursing home characteristics when determining survey team composition, provided that the team includes a registered nurse. The State Operations Manual notes in section 2801 that to the extent practical, the team's composition should reflect the type of facility surveyed; and
- Conducting cost/benefit analysis of care approaches, based on resident outcome data adjusted for case-mix classification categories. This is consistent with the Department's medical treatment effectiveness initiative.

Many software programs currently used by nursing homes to enter MDS information already have the capacity to generate timely resident census information such as that found on the HCFA form 672. Several States are also developing systems to facilitate this activity for providers. The availability of the MDS standard system will provide significantly more detail on resident characteristics than general census information, and will make use of definitions that have been clinically developed and refined to maximize both reliability and validity. As such, the MDS will create a whole new model for understanding and communicating about resident characteristics. This new model will far outperform the limited view of residents that can be derived from information from current sources, such as the Form 672.

We further believe that automated resident status information has much more potential to further decrease the amount of paper work associated with the survey process. We have recently completed an evaluation of the survey process and intend to make ongoing refinements to incorporate new technologies and increase the efficiency of the survey process.

*Comment:* One commenter stated that using computerized data to target surveys would resemble a ''big brother'' environment and not one conducive to accurate assessments for fear of investigations based upon minimal data.

*Response:* We disagree that using assessment data to target the survey process would resemble a ''big brother'' environment or that fear of investigations would affect the accuracy of assessments. Facilities already submit significant resident-level information to support both survey agency functions and for claims processing under Medicaid and Medicare. These data have been collected for years without the adverse effects suggested by a ''big brother'' analogy; instead, to the extent that facility information has been made public (for example, release of survey and complaint results and findings), this release has served to provide valuable information to those interested in promoting the quality of life in nursing

facilities. There is no reason to believe that collection and analysis of MDS information will not similarly be used in the interests of the general public with respect to their right to know the quality of healthcare services delivered by Medicaid and Medicare providers.

The MDS simply provides a better, more powerful mechanism than is currently available to observe and report resident condition or to monitor facility quality and safeguard the rights of residents of these facilities. The MDS is a tool for measuring healthcare facility performance, which also creates a foundation for improving the effectiveness of regulatory agencies as well as their operational efficiency.

Having a standard MDS repository available within State and Federal agencies provides a rich information resource to serve many objectives: it will provide access to reliable information and standard measures of resident characteristics for the many groups interested in improving care and quality of life in nursing homes, including consumer advocates and researchers; and, the MDS will support many other programs within States including providing the basis for Medicaid payments as is currently in effect in a number of States.

Clearly, the availability of MDS information within standardized Federal systems maintained by States directly benefits the general public as consumers of healthcare services and generally enhances the public knowledge of the quality of these services.

Furthermore, we expect that the MDS repository will enable HCFA or its State agent, or both, to provide facilities with analytic reports based on aggregated resident characteristics. This is consistent with a quality improvement model, as it allows facilities to compare themselves to other homes that are similar in terms of size and resident demographics. This directly promotes facilities as they seek to develop their own in-house quality assurance programs. Ultimately, facilities may use the data in ways that would analyze allocation of resources, and demonstrate efficiencies in caring for certain types of residents, and in turn, negotiate with managed care organizations for admission of certain types of residents.

We recognize that information contained within the MDS assessment is sensitive and must be safeguarded, and that protecting the privacy of residents is essential. In establishing a system of records for storage of MDS data, both HCFA and the States (as HCFA's contractors in performing survey functions) must comply with the Privacy Act, which applies to Federal systems of records containing individually-identifiable information. While we can make public aggregate summaries of the data, there are strict Federal guidelines for the release of individually-identifiable information by Federal agencies to any individual or organization. We can only release individually-identifiable information if a disclosure provision exists in the Privacy Act System of Records that is published in the **Federal Register**. We review requests on an individual basis, according to the provisions of the Privacy Act. Refer to the more detailed discussion later in this preamble concerning protection of privacy.

In summary, it is clear that the availability of structured analyses derived from MDS information will empower those working with a variety of approaches to improve the lives of residents of nursing homes. Whereas the big brother term suggests a scenario in which the interests of the individual are sacrificed to promote the interests of the State, this is clearly not the case with respect to the objectives for MDS information. Instead, MDS information will be used to directly support the interests of individual nursing home residents by substantially enhancing our understanding of healthcare delivery in nursing homes and by creating a standard framework for monitoring the quality of this care.

*Comment:* A few commenters noted that computerized assessment data would support a case-mix reimbursement system, and that it would be helpful to be able to compare facilities with similar case-mix levels.

*Response:* Our Office of Research and Demonstrations began the Nursing Home Case-mix and Quality Demonstration in 1989. One goal of the demonstration is to design, implement and evaluate a nursing home payment and quality monitoring system for Medicare skilled nursing facilities based on resident-level information contained in an expanded set of MDS data. States participating in the demonstration are also using MDS data to calculate reimbursement under Medicaid. Computerized information from the demonstration's data base will provide information on outcomes and processes of care, stratified by case-mix and other characteristics in the six participating States. This will also provide a mechanism by which to evaluate the effect of reimbursement on quality issues.

Several other Medicaid agencies in States not participating in the demonstration have chosen to independently implement an MDS-based case-mix system for setting payment rates for facilities and for determining coverage. Numerous other States are currently studying moving toward a case-mix payment system based on the MDS. Furthermore, States have identified a plethora of other functions to be supported by information contained on the MDS assessment form, these functions include: utilization review, service placement, and improvement in the States' ability to monitor and evaluate the cost-effectiveness and quality of care and services provided under the Medicaid program.

At least two States have already incorporated, or plan to incorporate, MDS information into their Medicaid management information system. West Virginia notes that to do so will allow the State to fine-tune its long term care rate setting and payment methodology. West Virginia integrated its stand-alone long term care payment process into the Medicaid management information system. The system captures monthly data to calculate the resident-specific case-mix index. An electronic billing system was implemented through the Medicaid management information system, which calculates the base rate reimbursement for all Medicaid beneficiaries, as well as the additional payment due based on the case-mix acuity determined from an expanded set of MDS data. The MDS reporting system not only enables the Medicaid agency to conduct utilization review, but also allows the survey agency to use the reports for quality of care issues.

Another State has a legislative mandate to integrate to the fullest extent possible, its MDS system, preadmission screening and annual resident review system, and treatment authorization request system. The State points out that, because it uses a composite per diem rate, the State agency has little ability to comprehensively review and adjust approval or reimbursement systems in order to improve the quality of care, increase efficiency, or control costs in long term care. We believe that integration of the MDS and the Medicaid management information system will support the objectives of its Medicaid program, including provision of the highest practical level of care and management of available funds in a fiscally prudent manner to maximize purchasing power. The State maintains that its system will provide information to facilities, State and Federal agencies, and to the public that will improve the quality and cost effectiveness of care delivered in the State.

*Comment:* Another use of computerized resident data that

commenters addressed was to support policy analysis and monitoring of trends. One State noted that the data could be used to inform and improve general Medicare and Medicaid policies. Another State gave the example of using the data as a tracking system for prevalence of pressure sores, restraints, and drug therapy. A commenter stated that data could be used by the appropriate quality monitoring personnel in the State to increase the probability of detecting and analyzing State-wide health care problems. Another State commenter suggested using the data at the resident-specific level to determine an individual's needs for assistance with activities of daily living and other required services. The commenter also discussed analyzing aggregate information for residents by facility.

*Response:* We agree that these data will benefit both the policy and operational components of States and the Federal Government as well as provide valuable information to the consumers of long term care services.

Potential benefits in policy development and evaluation expected from this information include the following:

- Foremost is the added operational efficiency derived from the MDS' ability to support a multitude of applications and programmatic objectives. As a single form designed to capture a comprehensive view of residents and related facility care practices, when submitted within the context of a standardized data management system, it greatly reduces the operational costs of data gathering as compared to current program requirements involving multiple forms and submissions from the facility. For example, many States receive three different categories of resident information from facilities, each requiring separate forms and submission rules: placement determination forms (for example, preadmission screening and resident review), payment-oriented clinical information to support case-mix adjustment (for example, Minnesota's or West Virginia's case-mix assessments), and survey-oriented forms describing resident characteristics. With the breadth of data collected on the MDS, the requirements in each of these examples can easily be met via a single submission of MDS data; thus, the operational overhead and associated costs for both facility and State are reduced.
- At the national level, policy decision-making, development, and evaluation are supported through the creation of a standard means to analyze State differences in the quality of services and resident care outcomes in the nation's 17,000 certified long term care facilities.
- By deriving both payment and quality functions from a single instrument, a framework is developed to closely monitor the relationship between payment and corresponding service delivery, and to provide an objective basis upon which incentives to promote and reward outstanding care patterns and outcomes can be built.

With respect to support for survey agency operations, creation of a standardized MDS repository in State agencies provides the framework for the development of an information-driven survey process by which the frequency and scope of facility review are based on objective measures of a facility's performance in comparison to established standards. This information-based survey concept and its benefits are discussed in prior sections of this regulation.

*Comment:* We also received other suggestions and examples of ways that States are currently using computerized MDS data. A few States indicated that they are using or could use the data for resident review requirements under the preadmission screening and resident review program (PASRR). Other ideas included:

- Relating to research support, MDS information will support both basic clinical research activities as well as practical applications such as identifying issues for ''best practice'' conferences.
- Using the resident data to identify strengths of each facility, staffing patterns, common diagnoses, and resident characteristics (suggested by a professional organization).
- Using the data for health planning related to long term care services, certificate of need decision-support, projecting nursing home bed need, and determining characteristics and care needs of current residents.
- Identifying industry and surveyor training needs with respect to changing demographics and industry structural delivery mechanisms (for example, as service delivery blends across multiple traditional care settings).

One State commenter expressed the belief that the paperwork burden in that State would be reduced by having MDS data available for a variety of purposes.

*Response:* We agree that potential benefits exist for all of the above listed uses of automated assessment information. A standardized system for MDS data collection and analysis that we will be providing to States will facilitate States' and facilities' ability to make use of these data by creating an infrastructure for managing, analyzing and distributing information to meet these varying program objectives.

*Comment:* A commenter did not think that a facility could determine staffing patterns from the MDS data set, which would negate its ability to be used in determining differential rates of payment.

*Response:* The commenter is partially correct, in that the RAI does not explicitly collect information on staffing. However, staffing standards, staffing mix, and minimum staffing requirements are already well understood with respect to the intensity of care required for a given resident and his or her clinical characteristics. There are, in fact, several commercially available systems that currently use MDS data and derived resident characteristics information to assist facility administrators in setting appropriate staffing levels according to the mix of resident care requirements in their facility.

Furthermore, with respect to State payment and rate setting, States that currently use an MDS-based case-mix payment approach have adopted the resource utilization group methodology for the payment determination. This methodology is based on resource groupings that are created through time studies of facility staff as they carry out their daily care tasks. These time study data are then linked to corresponding resident characteristics data to determine levels of care resource utilization (staff time, supplies, etc.) for given sets of care needs.

Thus, in this approach, staff requirements are implicit in the determination of each distinct care grouping, each of which is then associated with a specific reimbursement rate. Residents with complex care characteristics fall into a higher reimbursement group which directly reflects the additional staff resources required to care for that resident. In more sophisticated States, these models have been extended to allow for staffing pay rate differences across various regions within the State (for example, urban vs. rural staff pay differentials).

The current MDS 2.0 assessment form includes calculations for several of the most common variations of the resource utilization group's scoring in the standard specification for MDS data. Therefore, States that do not currently use case-mix-based reimbursement will still have an implicit and proven method of measuring the relative care and staffing requirements of residents

according to widely accepted norms for such comparisons.

Again, the ability to support this functionality is created by the deployment of the standardized system for managing State MDS data repositories, upon which such resource utilization groups-oriented analyses will be derived.

*Comment:* We requested public comment on whether to collect a sample or 100 percent of MDS data. Of those who commented, most believed it would be preferable to collect 100 percent of facility data. One State thought that collecting only a sample of data would not produce the necessary level of detail required for a multipurpose data base system. The commenter further stated that operational activities generally focus on specific individuals, which would usually require information on all residents from all facilities. Another noted that 100 percent would be advantageous for rate setting and quality assurance, recognizing that the intended use of the data influences the collection requirements. The commenter said that an aggregate of 100 percent of facility data would serve well for the Federal level data set. A third State believed that having facilities submit data for all residents would make the State survey agency's sampling procedure in the long term care survey process more effective, as well as result in a comprehensive national data base. One State thought that sampled data would be disadvantageous in that it would provide incomplete or inaccurate representation and would be influenced by factors such as population density.

Those opposing collection of 100 percent of the data listed the associated cost, the size of the data base, and the man hours involved in collecting and maintaining the data. Proponents of collecting a sample of facility data noted that current survey protocols determine compliance with State and Federal requirements based on a sample, and that MDS data set required for submission should be no different. A national provider organization said that collecting 100 percent of the data would not meet the underlying intent of the law pertaining to the implementation of comprehensive assessments, the resultant care plans, and improved quality of care. A national provider organization believed that if 100 percent of the data is collected at the facility level, the State should send us a stratified sample on a quarterly basis, while if a sample is gathered at the facility level, the State should send us the entire sample on a quarterly basis.

*Response:* There are many drawbacks associated with sampling. An incomplete representation or smaller number of records would make estimates of trends more difficult. Problems with resampling would prevent the development of longitudinal measures. Such problems include:

- The retention of any bias in the initial sample that would increase over time and would affect the reliability of the data.
- The unequal burden on facilities in the sample to correct errors, respond to inquiries and provide data.
- The need to develop complex instructions that would direct facilities how to replenish the sample when subjects drop out. We would require other instructions to handle changes of ownership in facilities, facilities that leave the Medicare and Medicaid programs, and facilities that go out of business.

In short, it would be difficult and expensive to construct and maintain a statistically significant sample of residents for whom we would require a facility to transmit its MDS records to the State.

Furthermore, since the facility must obtain the information required by the MDS on each resident for clinical care planning, and given that most facilities today have already automated this process, the added requirement of submission of data adds comparatively little overhead and associated costs to this process. Certainly, there is some fixed cost associated with developing and supporting transmission of a single resident's record to the State, but the marginal cost of transmitting all residents' records is negligible. Therefore, there is no cost saving to the facility to transmit MDS assessments for a sample versus the entire population of residents.

We agree with the comments that support requiring facilities to transmit 100 percent of all required MDS assessments. We are requiring that a facility submit all initial, annual, and quarterly reviews, as well as partial assessments completed upon discharge, transfer, death, or reentry to the facility, for all residents, and that a State submit those assessments to us.

Generally, selection of a statistically representative sample of MDS assessments adds another complicated, costly and unnecessary layer to producing useful, valid data that can be used to inform States, nursing homes, and us about the quality of care and the status of residents in nursing homes.

One hundred percent of the data is necessary for the following reasons:

- It is necessary for longitudinal tracking of residents across time and facility admissions. This will allow us to track special subpopulations of residents such as those with pressure sores or Alzheimer's disease. It will allow the detection of certain trends, such as characteristics of new admissions to nursing facilities, and it will allow the detection of rare but significant events, such as hospitalizations for pneumonia, fractures or other conditions.
- The universe of data is also necessary to link to facility level data bases, such as ASPEN deficiency data in State agencies and the Online Survey, Certification and Reporting System, and to link to Medicare and Medicaid claims files at the national or State level to determine patterns of utilization and resource use pre- and post-admission to nursing homes, and to determine resource utilization in nursing homes.
- It allows for targeting individual and aggregate resident outcomes for use in an information-driven survey process that would be impossible without a universal data base.

The universe of MDS assessments makes possible the analysis of data at any level (for example, resident, unit within a facility, facility, State, regional, national, or for specific resident populations). An incomplete representation or smaller number of MDS assessments, as well as issues associated with resampling that were mentioned above, would limit trend analyses.

Working with the universal population of resident assessments will eliminate the technical difficulty and expense of selecting and maintaining a representative sample such as will be necessary to support longitudinal analyses. Creating and implementing a complex sampling process would be burdensome to facilities and States, and the burden could fall unequally on selected States or selected facilities. If facilities were required to perform sampling, there would be additional cost to upgrade their software and training for this capability. Additionally, some sampling methodologies would require complicated survey analyses to adjust sampling design. This would also be expensive.

In conclusion, the marginal additional cost of obtaining the full universe of assessments will, in fact, be exceeded by the cost and difficulty of maintaining a representative sample of assessments large enough to provide the necessary information for all the uses proposed for the data base.

*Comment:* A State suggested submitting 100 percent of data to the State, which would then submit only a sample to us. The State contended that it needed the most complete data set possible. The State also noted that its data base would be manageable and would not warrant sampling.

*Response:* We disagree with the concept of sending a sample of data to us. Our regional offices have many of the same needs as State survey agencies for 100 percent of resident-level data for certified long term care facilities within their States as one method to target and conduct Federal monitoring surveys in nursing homes. Furthermore, we need 100 percent of the data to develop and refine quality measures, which will be an integral part of the data-driven survey process.

All the factors enumerated in the above comment regarding the negative aspects of sampled submissions between facilities and States apply equally to the submission between States and the national data base: there is no advantage in terms of cost saving by using a sampling approach as it is no more costly or complex to transmit assessments for the full population. In fact, managing sampled data sets is actually more costly; and, the ability to meet the objectives for these data at the national level in terms of support for policy decision-making, development and evaluation, as well as for support for research initiatives, requires access to a complete population-based repository of assessments.

*Comment:* Commenters discussed whether a national data base would provide useful information to States for making comparisons for management, performance, measurement, and research purposes. Of those who addressed this, all agreed that such information would be valuable. One State said that it would be helpful for them to be able to compare their State with others regarding length of stay for residents with certain diagnoses and for utilization rates of special treatments and procedures.

*Response:* As discussed previously, we agree that there are many useful purposes for information from this proposed national MDS data base. One example of this submitted by a commenter is that the data base could provide information for interstate comparisons of resident lengths of stay according to diagnoses or outcomes.

Fundamentally, the MDS data, represented within the context of a standardized information system, provides the foundation for organizing complex clinical and facility information in ways that can be easily generalized to support numerous current and future objectives at the facility, State, and Federal levels. It provides a common framework for communicating about resident clinical characteristics, care outcomes, and quality, as well as facilities' service delivery and quality. Many of these specific objectives have been identified throughout this regulation.

Finally, the RAI has been translated into at least seven languages and is being used in several European and Asian countries for care planning to improve clinical care and for research purposes. The international development of comparable data sets would facilitate performance of cross-national research studies to examine the effects of differences in care patterns on long term care resident outcomes. These studies may provide a great deal of information on the geriatric long term care population across all countries.

*Comment:* Of those who addressed how data should flow, the majority of commenters, including a national provider organization, stated that data should flow through the States to us. Some expressed the belief that States should also maintain their own data base. One commenter recommended that data be transmitted to us by the States on an annual basis. A few commenters believed that the States should send summary information to us. One commenter said that initially, facilities will need a great deal of technical assistance, and it would be easiest for that to come from the States. A national provider organization wanted States mandated to devise methods for disseminating computerization information to facilities and for providing technical assistance. One State noted, however, that States should not be required to collect and store information, if there are no expectations about how the data will be used.

*Response:* We agree that States should have the responsibility to provide some level of general and technical assistance to facilities as relates to our and States' requirements for encoding and transmission of MDS data. We understand that States have varying levels of experience with the use of computerized information systems and data bases. However, several States have already established an MDS data base for case-mix, quality assurance or survey and certification purposes, or both, and have provided necessary training and assistance to facilities which enabled them to successfully implement automated systems.

We have established technical and user groups as part of the systems design process. These groups consist of States, provider and consumer representatives and experts in systems design. Their expertise and knowledge will be used to facilitate provider and State automation. We will also work with States to ensure that personnel have the necessary technical expertise and training to fulfill State automation responsibilities. Also, system specifications and other relevant materials are already available via an internet web-site, initially established to support MDS software vendors, and otherwise available from HCFA.

The pilot testing of the MDS standard system and associated procedures is another step currently undertaken by us to ensure that all aspects of this standard MDS system are fully understood with respect to technical operational requirements, State and facility user support needs, and general issues associated with deployment and system acceptance. Information from this test phase will directly support our ability to assist States in successfully installing and operating this system and ensure that facilities can easily accomplish their assessment submission requirements.

We fully appreciate the magnitude of support and effort that will be necessary to ensure that appropriate training is developed and disseminated to all who will be involved in implementing this data base, and are in the process of developing additional procedures and communication strategies to address this need.

Finally, a central requirement for the MDS standard system design is to ensure that maximum attention is given to understanding and assessing current technologies employed by facilities and States so that the MDS system will best integrate and accommodate these existing systems. We intend that this will both facilitate system acceptance across all user levels, and minimize support and other implementation costs. Also, we will emphasize technologies that lend themselves to ease of use and user-friendliness in the selection process for each level of the standard systems, but especially as this relates to systems used by facilities to submit MDS assessments to their State agency. Also, one of the implicit benefits of the decision to develop a standard system for MDS data management is that this provides the greatest ability to centralize support efforts, and also reduces costs for multi-state facility chains and software vendors by reducing the variation of systems with which they will interface, in that they need only support access to a single standard system across States.

*Comment:* A few commenters thought that the data should be sent directly to us without being sent to the State first. One said that it would be costly and duplicative if States maintained their own data base. One State agreed that State data bases would be duplicative and suggested that States have access to a HCFA data base through the Online Survey, Certification and Reporting System. The State commenter noted that this could be difficult for States that have adopted an alternate Resident Assessment Instrument, since it would be necessary to remove extraneous data collected by the alternate instrument. A State put forth the idea of creating a single national entity for the centralized collection of MDS data. The commenter suggested that States could then arrange for periodic digital communications with the entity, believing that this method would be more efficient than each State having to develop the capacity to receive facility data.

*Response:* We support having each facility initially submit 100 percent of the MDS data to the State. This would enable States to maintain a data base for use in Medicare and Medicaid activities that are primarily State responsibilities: quality assurance, longitudinal tracking of care outcomes for survey, certification and licensing, and in some States, case-mix reimbursement classification systems. Several States are already using computerized MDS information for this purpose, having decided that the derived benefits outweigh the costs of establishing and maintaining such a system. Our experience has been that States realize even more programmatic uses for the data once it is available to them.

While we could develop a central mechanism for collecting information from providers, there are significant disadvantages associated with this approach: (1) It would impose an additional layer between facilities and States with associated impact on timeliness and accuracy of information; (2) With so many of the objectives for MDS data being at the State level, direct submission of information to us creates an unnatural information flow which will have an impact on the ability of States to meet these objectives, especially as many of the objectives, such as the information-based survey process, are so dependent on timely access to MDS assessment information; (3) With the many State-specific uses for MDS information, such as case-mix payment, many of which require specialized elements recorded in the State-unique S Section of the MDS, we could not possibly centralize support for these functions or even accommodate all these variations in a central repository; thus, direct submission to us would defeat the goal of supporting unique State objectives; and, (4) States are in a much more appropriate position to support their individual facilities with respect to the MDS assessment, submission and data validation processes.

The information provided by a State-maintained MDS data base is not duplicative of a national data base. States vary with regard to their demographics, licensing policies, quality assurance and reimbursement systems. States are a logical level for maintenance of MDS information since each State performs and must manage its own survey and regulation processes. Information provided by MDS assessments cannot be obtained from our Online Survey, Certification and Reporting System. The Online Survey, Certification and Reporting System itself is not designed to provide the quantity and specificity of the information in the proposed MDS data base. Furthermore, a central MDS repository is necessary to support objectives such as policy and regulation development, but would not be as readily available for State functions as State-specific data. Since specific functions (for example, information-based survey process) are performed from this data base at the State level, it would be inefficient to require States to support these functions via access to a central repository.

We disagree that it will be significantly more expensive for States with alternate instruments to collect MDS data. The design of every aspect of the standard MDS system, from the record transmission format to the State data base repository, is intended to support the customizations required by individual States. Thus, although there will be some additional costs during the initial system implementation in States requiring custom formats, the system design makes these costs insignificant. At this time, there is no State variant of the MDS that cannot be accommodated within the context of the standard system architecture.

With respect to transmissions between the State and national repositories, we are requiring that a facility transmit only the core MDS items on the HCFA-designated RAI, the State will only maintain the State-specific elements at the State level.

*Comment:* A State noted that it currently collects computerized data from only Medicaid-certified nursing facilities because the State can reimburse them. The State asked if computer requirements apply to Medicare-certified facilities, and whether Medicare facilities would submit directly to us.

*Response:* The requirement to place the MDS in machine readable format applies to all Medicare and Medicaid certified nursing homes. There are no plans to have Medicare-only facilities submit MDS information directly to us. In the impact statement, we address how certified facilities will be reimbursed for information systems equipment and supplies, as well as data encoding and transmission. Long term care facilities certified to participate in Medicare are required under section 1819(b)(3) of the Act to use the State-specified RAI. The State's authority to collect computerized data from Medicare facilities springs from its role as an agent for us in performing Medicare surveys under section 1864 of the Act.

*Comment:* Commenters discussed auditing procedures that would ensure the accuracy of the data entered into the national data base. Some, including State commenters, believed that the accuracy of the data should be verified through the survey and certification process. A State commenter believed that it would take surveyors approximately 5 minutes to compare a resident's actual records with a computer printout. One commenter pointed out that if the accuracy is checked during the survey, a facility will take the assessment seriously and the assessment would not be viewed as ''paperwork.'' Another supported using surveyors to audit the match between a resident, his or her MDS and a computer editing software system.

*Response:* We agree that auditing the accuracy of MDS data on an on-going basis is very important in validating the ability of the data to support key operational and policy decisions. Indeed, the establishment of mechanisms to ensure acceptable reliability levels is critical to our ability to move forward with using MDS data for quality assessment and improvement activities, as well as other programmatic purposes. Currently, the survey process includes evaluation of the accuracy of assessments, as required by sections 1819(g)(2)(A)(II) and 1919 (g)(2)(A)(II) of the Act. Surveyors compare information from the most recently completed RAI with the current status of a sample of residents found onsite at the time of survey. We may modify and enhance the methods for accomplishing this task to reflect access to more longitudinal resident status information.

Several States, particularly those with case-mix reimbursement systems, have a separate auditing system in which nurse reviewers conduct an onsite assessment

using the MDS and compare it to that completed by the facility in order to verify the accuracy of the facility's assessment. We have recently completed a study of such methods and will be considering how to most efficiently assure the quality of MDS data. The methods under consideration could involve onsite review by surveyors or others, as designated by us, or offsite data analysis and evaluation, or both. We are also considering whether auditing would be carried out in conjunction with the survey process, as well as the timing and frequency of audits.

*Comment:* Commenters discussed methods for data verification. A few commenters stated that we should not require auditing and we should accept data as submitted. One State noted that any auditing process will result in cost increases. Another commenter pointed out that the data should be error free before the facility submits it. A commenter suggested that we not require auditing unless the MDS data is used for reimbursement purposes. A few commenters, including a national provider organization, disagreed with the idea of double entering data as a means of ensuring data integrity. They stated that it would be too costly, resulting in an unnecessary expenditure of time, cost, and effort.

*Response:* We strongly disagree with the comments that verifying accuracy of the data is not necessary. Foremost, it is imperative that the data be accurate and reliable for it to be used in any policy making, planning or resource utilization capacity. Accurate resident status information is necessary not only for reimbursement systems but for the health planning at the State and Federal level. Secondly, accurate assessments are necessary for quality care at the facility level, given that care planning should be based on the resident's assessment.

While data verification may be costly in the short run, we believe that it is cost efficient in the long run, in that accurate data will help prevent unnecessary expenditures or poor policy or reimbursement decisions that might result from erroneous information.

Several States that have computerized MDS data bases have encountered significant inaccuracies in the data originally received from facilities. This problem was rectified by establishing a process for ongoing validation of the accuracy of the data through on-line electronic systems feedback to facilities, or other systems for frequent cross checks and communication.

On-line data editing systems can facilitate timely detection and correction of inaccuracies. Virtually all the States that have computerized MDS data bases have developed built-in edit checks for obvious inaccuracies which would disallow entry of conflicting or invalid data, for example, for a resident coded simultaneously as comatose yet, inconsistently, enjoying playing cards.

We agree that double entering data to ensure validity would be expensive and we are not requiring it. We emphasize, however, the important role that validation plays in the establishment of a data base. To this end, we published standardized range and relational edits in May 1995 that MDS data will have to pass in order to be accepted at the State level.

*Comment:* Some commenters placed responsibility for the accuracy of the data on the facility. According to a commenter, having the edit checking process occur at the facility is critical, otherwise the State system would quickly become overburdened with rejecting records back to the facility for correction. One recommendation was for a facility to have a system for visually checking MDS information prior to submitting the data. Commenters noted that computer software can validate that the MDS is complete and that responses are within an acceptable range, and can also generate a condensed MDS with the responses, and staff can compare this to the MDS to verify accuracy. A State commenter proposed that we require a facility to maintain an accuracy rate of 95 percent for its data to be accepted by the State. Commenters suggested that a facility only transmit updates and changes to the data base once the original assessment is on file. Another proposal was for us to require a facility to incorporate surveillance and correction procedures as part of its quality assurance program.

*Response:* We concur that a facility has a responsibility to submit assessment data that is accurate, and there are many ways to accomplish this. A facility is required by section 1919(b)(3) of the Act to conduct a comprehensive, accurate, standardized and reproducible assessment of each resident's functional capacity. We are adding to § 483.20(g) the facility's responsibility to accurately assess residents, as well as § 483.20(f)(3), which notes the facility's responsibility to transmit accurate data to the State. We believe, however, that the State also has a role in verifying the accuracy of the data and systematically monitoring and evaluating the quality and accuracy of the assessment data which will be submitted from facilities.

States will monitor completeness and accuracy of MDS data submissions from the facility. A facility will be in compliance unless an unacceptable percentage of the records completed by the facility during a target period are either not submitted to the State or not accepted by the State because of data errors. We will determine compliance based on a review of missing records for the target period, allowing sufficient time after the close of the specified period for relevant records to be submitted from the facility to the State.

Our initial plan is to have States accept required records submitted by the facility, except when specific data errors occur. Currently, plans are for States to reject records only if:

- A submission file has a missing or misplaced header record or trailer record;
- Any record in the file does not have the correct record length with the last data character being the ''end of record'' delimiter required by the standard data specifications;
- The submission file contains an invalid facility ID code (Fac__Id in the data specifications) in the header record or data record; or
- The total number of records in the submission file does not correspond to the record count given in the trailer record.

We will evaluate this process and make necessary changes based on experience.

A facility is in compliance unless there is an unacceptable error rate for the set of records completed by the facility during a specified period. Determination of compliance is based on a review of records accepted by the State, allowing sufficient time after the close of the specified period for relevant records to be submitted from the facility to the State. The error rate in question is the total number of fields in error, due to either range or consistency errors as identified in the MDS 2.0 data specifications in effect, divided by the total number of required fields across all records for the specified period. The fields that we require for each type of record (for example, admission assessment, quarterly assessment, discharge tracking form, etc.) are detailed in the MDS 2.0 data specifications.

Further, States have a role in training facility personnel in methods of preventing and correcting data errors. The suggestion by a commenter that we require a facility to incorporate surveillance and correction procedures as part of its quality assurance program may be a viable option.

*Comment:* Other commenters believed that States should bear primary responsibility for the accuracy of the RAI data. One State suggested that the States should provide facilities with report formats that cross check interrelated data. Another commenter proposed that a State keep verification requirements for transmitting data separate from verification of clinical consistency of the data. A commenter pointed out that it was unclear whether we intended that States notify a facility of errant data before transmitting the data to us. One suggestion was for the State to check data for completeness, accuracy and compliance with processing instructions. Another was that the State specify a standardized format for transmitting data that would require compliance with edits. A few commenters thought that the States should be responsible for the quality of the data transmitted to us.

*Response:* The responsibility for data accuracy must reside with the facility, the source of the data, and a facility should ensure that MDS data pass all standard accuracy edits before transmission to the State. The State does have a responsibility to monitor accuracy of data submitted by a facility and aid the facility in achieving accuracy. The State will perform standard accuracy edits on data files as they are received and report any errors found to the facility. A State will also be able to monitor the error rate for a facility over time and produce an error summary report to share with the facility. The State will also have the ability to monitor the error rates for any MDS software vendor. When systematic problems are found for a vendor, the State will have the opportunity to work with that vendor to correct the problems. We may also develop procedures for onsite data accuracy visits to the facility when error rates are high. We will determine the frequency of such visits during our formal systems design process. MDS data submitted to the State will be transmitted to us at least monthly. We will again edit the data for accuracy. Accuracy edits will be performed at the facility, State, and HCFA levels.

*Comment:* We received a number of other suggestions to ensure the accuracy of data. One was to allow the registered nurse assessment coordinator to validate the data. A few suggested a computer system that has a basic set of edit checks, like high-low checks, completeness checks, clinical inconsistencies, and incorrect data checks. A consumer advocacy organization pointed out that some States currently have special nurse auditors who validate the match between a resident and his or her MDS. A State suggested that the reliability of MDS data be verified by periodic, random, onsite review of individual records performed by either State program agency staff or by a contracting organization. Another noted that if validity becomes an issue, we could consider a regulatory mechanism for appointing independent assessors.

*Response:* We agree that the computer systems should have basic edit checks, which ought to be in place both at the facility level and at the State level. The standard data specifications we have developed include valid ranges and required formatting for MDS items and consistency between MDS items. Detailed information concerning these data specifications is available on our MDS World Wide Web site (at http://www.hcfa.gov/Medicare/hsqb/mds20/) and is otherwise available from us and the State survey agency. We anticipate that facilities will be able to select commercially available software packages that use these data specifications. We note that the current regulation grants States the authority to take over the assessment process if a facility knowingly and willfully certifies false assessment statements. Section 483.20(c)(4) allows the State to require that assessments be conducted and certified by individuals who are independent of the facility and who are approved by the State. New York, for example, contracts with their peer review organization to conduct onsite audits of the Patient Review Instrument, used to calculate Medicaid reimbursement. Nurses sample a certain number of resident records. If the records do not pass standards based on resource utilization group, the facility loses its ''delegated status'' to conduct assessments and must hire an independent assessor for 1 year.

*Comment:* Many of the comments we received regarding privacy and confidentiality issues demonstrated concern regarding privacy issues and indicated that residents' identities need to be protected. Some of the commenters believed that MDS information should be available or reported in the aggregate format. A few commenters wanted identifying data available at the State level but not in any public data sets created. One commenter questioned why we should have access to assessment information of private pay residents. A national provider organization stated that the need for information in planning and quality assurance should not be met at the expense of the resident's and facility's right to confidentiality. Commenters suggested that we develop ways to block resident identifiers or develop an alternate system of identification like numerical coding.

*Response:* We agree that protecting the privacy of the resident is essential. In establishing this system of records, both we and the State (as HCFA's contractor in performing survey functions) must comply with the Privacy Act (5 U.S.C. 552a), which applies to Federal systems of records containing individually identifiable information. While aggregate summaries of the data can be made public, there are strict Federal guidelines for the release of individually identifiable information by Federal agencies to any individual or organization. A release of personal identifiable information can only be made in limited circumstances described in the Privacy Act. Disclosure may be made under the Privacy Act for ''routine uses,'' which are compatible with the purpose for which the information was collected. These routine uses are described in the Privacy Act System of Records, which is published in the **Federal Register**. Requirements associated with routine uses are also set forth in the System of Records. In most cases, a ''data use agreement'' is required with the recipient being bound, in turn, by the Privacy Act. Some States have additional laws strengthening the protection of privacy of the resident.

We would have difficulty assuring the quality of care in facilities if we only had access to periodic aggregate data. While allowing evaluation of prevalence rates (percent of residents who have a particular condition at a given point in time) over time, such data would largely preclude any quality of care indicators based on incidence rates (percent of residents who acquire a given condition in a facility between two points in time). For example, periodic aggregate data might show the prevalence of decubitus ulcers in the resident population, but we could not review it to determine the incidence of such ulcers while residents are in the care of the facility. A high prevalence of ulcers may indicate that the facility accepts residents with existing ulcers from the hospital, but a high incidence may indicate substandard care. If access were limited to aggregate data, it would also be impossible to evaluate other important outcome measures potentially indicative of quality of care.

Our quality assurance activities in Medicare and Medicaid certified facilities are not limited to selected residents (for example, Medicare or Medicaid residents, or both). Our long term care survey process directs State

survey agencies to review the care provided to all residents of certified facilities, regardless of payor source. For example, quality assurance survey teams review a random sample of residents without respect to payor. We would often have difficulties evaluating the quality of care in Medicare and Medicaid certified facilities if access to data is limited to residents who are Medicare or Medicaid funded. This is especially true in a facility in which Medicare or Medicaid residents, or both, are a minority. This requirement is, therefore, in keeping with the quality protections that are afforded to all residents in certified long term care facilities. We will not give out identifying information unless there is a demonstrated need for it; the routine use permits disclosure only if we determine that the research cannot be reasonably accomplished unless the record is provided in individually identifiable form.

*Comment:* One commenter was unclear why confidentiality is an issue, since we already have systems in place to guard confidentiality, and these systems could carry over into the MDS system. A professional organization recommended developing a software program that could block identifying information except when needed by designated persons.

Some commenters addressed the question of who should have access to the data base. Several suggestions were submitted, including:

- The State survey and certification agency;
- The reimbursement agency (without resident identifiers);
- The ombudsman (one commenter suggested without resident identifiers while another said consistent with current access rights for resident records);
- The submitting facility (with no access to other facilities); and
- Aggregate data should be available to the public. Commenters proposed that a State have access to facility data in its own State with resident identifiers and to other States and the national data without identifiers.

*Response:* As aforementioned, under the Privacy Act, when personal information in the possession of the Federal Government on an individual is accessed by name, Social Security number or any other identifying symbol, we must publish a system of records notice. This notifies the public that we are collecting the information and will be accessing it in an individually identifiable way.

The notice lists routine uses for the information, including a list of entities to which we may release information upon request, the uses for which we may release information, and conditions under which we may release individually identifiable information. The Privacy Act requires that the routine uses be consistent with the purpose for which the information is collected. The Privacy Act does not mandate us to release the information. The system of records notice will support research as a routine use, but will require safeguards to ensure the maximum protection of individually identified information. It requires that persons or entities requesting the information sign an agreement to not re-release the data. The system of records notice also permits release to government agencies for purposes of monitoring nursing home care. We already have a routine use disclosure provision in place for handling data requests by those conducting health services or other appropriate research for most of our systems. We evaluate each request on an individual basis, including whether it is appropriate to release any data with identifying information.

*Comment:* A few commenters recommended that we not release resident-specific information unless the resident has directly consented. One State suggested that we and States issue ''designator'' numbers that would allow resident-specific information to be released. A commenter suggested that we build fines and penalties into the system for breach of confidentiality.

*Response:* As aforementioned, we will follow all provisions of the Privacy Act, as well as the Freedom of Information Act in managing the information from this proposed data base. Our Freedom of Information Act officer decides whether to release the records if a request is made at the Federal level. Under the Freedom of Information Act, individually identified RAI data generally would be exempt from disclosure as medical (and similar) files, the disclosure of which would constitute a clearly unwarranted invasion of privacy (5 USC 522(b)(6)). Under the Privacy Act, individually identified records may not be disclosed, except for good cause, including routine uses consistent with the purposes for which the information was collected (5 USC 522a(b)). (Aggregate data, not individually identifiable, could be released under either law.)

For records collected under the authority of our RAI requirements, States are bound by the Privacy act as our agent. In addition, most States have their own rules governing protection of privacy for records maintained at the State level. We expect each State to take the appropriate steps to ensure that resident-identifiable information is protected.

We are adding language to § 483.20(f)(5) that prohibits a State from releasing resident-identifiable information to the public, and provides that a facility may release resident-identifiable information to an agent only in accordance with a contract under which the agent agrees not to use or disclose the information except to the extent the facility itself is permitted to do so. We note that the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) provides stiff penalties for persons who wrongfully disclose individually identifiable health information. Such penalties can include fines or imprisonment, or both.

RAI data would be part of a resident's clinical record, and as such, would be protected from improper disclosure by facilities under current law. Facilities are required by sections 1819(c)(1)(A)(iv) and 1919(c)(1)(A)(iv) of the Act and § 483.75 (l)(3) and (l)(4), to keep confidential all information contained in the resident's record and to maintain safeguards against the unauthorized use of a resident's clinical record information, regardless of the form or storage method of the records. We recognize that there are circumstances that may necessitate the release of information from the resident's clinical record. However, these instances are limited by regulation to circumstances required by (1) transfer to another health care institution, (2) law, (3) third party payment contract, or (4) the resident (§ 483.75(l)(4)).

The transmission is limited to (1) using a private dial-up network based on a direct telephone connection from the facility or (2) mailing a diskette from the facility. In the case of either telephone communications or the mail, the information transmitted is secure, with interception of information being prohibited by Federal and State law, and strong penalties apply. We and the States both receive large volumes of unencrypted voice phone calls, unencrypted data telecommunications (for example, claims data), and unencrypted mailings, all including resident-specific information.

Section 1902(a)(7) of the Act requires Medicaid agencies to provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. Moreover, under the agreement between the Secretary and the State survey agency pertaining to

section 1864 of the Act, the State is required to adopt policies and procedures to ensure that information contained in its records from the Secretary or from any provider will be disclosed only as provided in the Act or regulations.

States may allow other agencies within the State to have access to MDS data to the extent that it is related to the operation of the Medicaid programs. All agencies must adhere to the confidentiality requirements of the Medicare and Medicaid programs relative to this information. We are also providing in § 483.315(j) that a State may not release resident-identifiable information to the public. Further, the State may not release resident-identifiable RAI data to a contractor without a written agreement under which the contractor agrees to restrict access to the data.

We believe that adherence to § 483.10(b)(1), Notice of rights and services, adequately addresses the commenter's suggestion that residents be notified. We believe that using designator numbers as a vehicle to permit release of resident-specific information is not feasible. Because such a system would require that all providers use the same number for the same resident, (in other words, to enable tracking of residents across different providers), implementation would be extremely burdensome.

*Comment:* Commenters addressed other issues pertaining to privacy and confidentiality. We received a recommendation to contact specific individuals who could assist in developing the security of a data base. Another recommendation was to carefully control computer access (in other words who can get to the data via computer at the facility and at the State).

*Response:* Both at the facility and the State, access to the MDS records for residents, whether those records are hard copy or electronic, must be secured and controlled in compliance with our requirements for safeguarding the confidentiality of clinical records. The facility must take precautions to ensure that only authorized staff have access to confidential information. Electronic MDS data should reside on stand-alone computers in secured physical locations, or access to those data should incorporate standard user ID and password techniques.

*Comment:* A few commenters thought that only the facility in which a resident resides should be able to make changes in the data entered. One commenter proposed that the data system require the facility to ''close-out'' a resident's information upon discharge or transfer, which would prevent the facility from changing that information. It would also prevent ''a receiving facility'' from entering new data on a transferred resident until the information base is closed by the transferring facility.

*Response:* We are in agreement that no other facility may make changes in the MDS data. A facility may only change MDS hard copy and electronic data as allowed by our policy. This policy requires that after the facility performs the assessment, it is ''sealed,'' and electronic records are ''locked.'' HCFA policy also require facilities to complete tracking forms indicating resident discharge from and reentry to the facility. The facility must complete and submit these forms and corresponding electronic records to the State within specified time frames. It would not be appropriate to require one facility to ''wait for'' a discharge record from another facility before entering and submitting data for Medicaid payment. This could result in payment delays for the one facility when another facility is delinquent on submitting MDS records.

MDS data bases at the State will be used for a variety of purposes, including quality monitoring, Medicaid and Medicare payment, and policy analysis. It would prove quite cumbersome and, at times unworkable, for all data changes to always be made by the facility of residence and then updated in the State data bases after resubmission from the facility.

*Comment:* Commenters discussed the schedule for submission of data by facilities, for example on an annual or quarterly basis. A national advocacy organization supported continuous data flow, pointing out that States need up-to-date information due to the survey cycle and their need to be able to respond to complaints when they are received. One commenter said that most facilities in their State routinely transmit on a weekly basis. Other commenters questioned how current would be the data that are to be maintained. The few who responded agreed that the data do need to be up-to-date and agreed with others who said that transmission should coincide with the RAI requirements. Others addressed the need for a transaction log to document transmission.

Some commenters noted that reimbursement agencies may require data on a more frequent basis for the purpose of rate setting. It was also mentioned that requiring transmission on a more frequent basis would be an administrative burden. A few commenters wanted the quarterly reviews to be transmitted also. A national provider group suggested quarterly submission, staggered in order to facilitate managing the large volume of data. For example, at the end of each month, 1/12 of the facilities would submit data for the preceding 3 months.

One commenter recommended that States transmit data to us on an annual basis. There was some support for collecting data on a quarterly basis. A few commenters believed that the States should send us summary information. A few States suggested submitting data on the same schedule as the MDS is completed—that is, upon admission, within 14 days of a significant change, and annually. Others agreed that annual submission would be adequate. A few proposed that data be transmitted twice a year. One commenter believed that all States should submit data on the same date.

*Response:* In order for MDS information to be timely enough for use in ongoing quality assurance programs, a facility must submit MDS data at least monthly to States. This would entail submitting all full MDS assessments (initial, annual and significant change), and any partial assessments (quarterly, discharge, and reentry) completed since the facility last transmitted data to the States.

States will also submit data to us at least monthly. The regional offices also need timely information in order to perform Federal monitoring surveys. To a certain extent, the role of the regional office mirrors that of State survey agencies. Hence, the regional offices need timely, complete information. Furthermore, this is necessary to enable us to timely evaluate State trends or regional problems. For example, linking resident status information with SNF cost report data could identify potential Medicare utilization problems in relation to certain outcomes or resident status changes.

Analysis regarding the timeliness of MDS data and frequency of transmission requirements has shown that the MDS data base must contain quarterly review information if it is to be used for quality monitoring purposes by State survey agencies. Much of the work being done to develop quality measures relies on quarterly assessment data for each resident. Leading researchers and survey experts agree that the quarterly review data are needed for the timely and reliable identification of resident outcomes for this purpose. There is under development, discussion and testing, a case-mix demonstration payment system using MDS data in calculating appropriate payment rates.

*Comment:* Commenters made suggestions regarding what edits should

be allowed without requiring the facility to produce a new electronic record or hard copy. One State wanted any change in MDS information to result in a new hard copy. Another State proposed that we allow a typographical error to be corrected at any time. A consumer advocacy organization proposed that if a facility makes changes to a computerized copy, it should be held to the same standard as written records. Another commenter believed that MDS software should create an audit trail of changes made to an assessment that would include the name of the person making the change, the date, the old value, and the new value. The commenter suggested that we permit a facility to keep the most current copy in a hard copy format. A State commenter believed that the computer program should have the ability to update the assessment information without changing the original version. Another State did not want to make changes if the data had been transmitted after the 21st day after admission. Another State proposed using those things that meet the criteria for significant change with regard to edits.

*Response:* According to current policy, a facility may correct typographical or factual errors within required time frames. To make revisions on paper records, a facility enters the correct response, draws a line through the previous response without obliterating it, and initials and dates the corrected entry. Computer-based systems must have a way to indicate and differentiate between the original and corrected entries on the printout of the corrected form, and to ensure that the correct information is transmitted to the State. Again, we note that the assessment must be accurate. A significant correction of prior assessment is completed at the facility's prerogative, because the previous assessment was inaccurate or completed incorrectly. Version 2.0 of the MDS contains an item response that, when checked, indicates that the assessment is a significant correction of a prior comprehensive assessment. A number of providers have called to our attention that the wording of this item precludes its use when the prior assessment that is being corrected was a Quarterly Review Assessment. We will add code to the MDS version 2.0 that will provide a mechanism for this.

A significant correction of prior assessment differs from a significant change in status assessment, in which there has been an actual change in resident's health status. If there has been a significant change in health status, the facility cannot merely correct the affected items on the MDS. The facility must complete a full new assessment. Any subsequent changes should be noted elsewhere in the resident's record (for example, in the progress notes). As stated previously, however, the procedures and policy governing issues of data storage, retrieval, validation and maintenance in facilities will also be addressed more fully in a forthcoming HCFA publication, such as a State Operations Manual.

*Comment:* Some commenters requested that the requirements we issue allow electronic signatures. This would avoid duplication by not requiring that the facility keep on file a hard copy with signatures.

*Response:* In the development of the system, we will consider requirements for electronic signatures.

*Comment:* Commenters addressed how and to what extent we should standardize electronic formats and how to revise the format to be consistent with technological changes. One State did not think that a standardized electronic format is necessary, and proposed that we request summary reports, findings and group data instead of individualized data, which would obviate the need for a standard format. Several others expressed the belief that we should specify a format. A national provider organization pointed out that a standardized format would facilitate collecting, merging, and analyzing national data. Another commenter noted that it would also decrease software development costs. A State provider organization pointed out that nothing would be more frustrating and costly than software that is not well thought out and requires several revisions. The commenter suggested that we already have experience in formatting because of the case-mix demonstration project.

A State expressed the belief that it would be easier to maintain a single format than have to deal with different software languages and media types. The commenter further said that we or the States should be responsible for making formatting changes and sharing them with those affected. Another recommendation was to use Online Survey, Certification and Reporting System and create a subsystem for MDS data. By accessing an ''enhancement log,'' the system would be under constant review and revision.

*Response:* We concur that many of these suggestions have merit. In the spring of 1995, we developed and issued a standard record layout and data dictionary. These were made available to facilities and software vendors as well as the States. When these regulations go into effect, the assessment records that facilities transmit to States must conform to the standard layout. Hence, software vendors have been strongly encouraged to use the layout and data dictionary when developing software products for MDS version 2.0. We believe that this will ensure uniformity in format but still allow facility flexibility and choice in terms of the software products they use to encode MDS records.

*Comment:* A national provider group proposed that we require States to develop and make available a software package that would transmit data in the appropriate format. A few commenters expressed the belief that as long as they meet Federal standards, States and facilities should be able to develop additional standards.

*Response:* We have developed, and are in the process of testing, a national system for MDS data transmission that will be made available to all States that includes commercially available standard transmission software. We are mandating that the facility transmit MDS data to the State according to minimum data validity specifications and using standard communication and transmission protocols. The State may choose to impose additional data validity specifications, exceeding our mandated minimum specifications.

*Comment:* We received a few suggestions regarding specific organizations with whom we could consult in developing a standardized format. One suggestion was to form a technical advisory board that would consist of Federal and State personnel, providers, hardware and software vendors, and resident advocacy groups. Another was to contact a specific standards committee to obtain their input on developing a format.

*Response:* We sought technical assistance from those parties as part of a technical advisory group that we organized as part of the systems design process. We met with several of the groups mentioned above early in the design process to get input on a number of systems development issues. We will continue to seek input throughout the development. We are committed to working closely with interested and affected parties in the design process.

*Comment:* Commenters suggested that the standardized format should be in either ASCII or EBCDIC, and should include data item description, data item beginning and ending column, data item length, and whether the data is right or left justified. One State noted that some States have already begun to computerize and that the format should be receptive to those programs,

particularly for States utilizing our RAI. A State commenter believed that a data dictionary should be provided for each data submission, which would provide a vehicle for documenting problems with the data submission.

*Response:* As previously stated, we have been working closely with States that are computerized. Several States were instrumental in developing the data dictionary and record layout. With their expertise, we constructed a standard layout that still allows flexibility for States which have added MDS items. Facilities and States must conform to the standard record layout, which is currently constructed in ASCII.

*Comment:* Several commenters wondered how facility noncompliance with the requirement to transmit the MDS data would be enforced.

*Response:* As stated earlier in this preamble, facility noncompliance with the reporting requirement established by this final rule will be subject to the full range of enforcement remedies set forth in part 488, subpart F, ''Enforcement of compliance for long-term care facilities with deficiencies.'' We will treat a facility's failure to comply with MDS reporting requirements as noncompliance under the definition in § 488.301. At a minimum, we will require a plan of correction, and will impose the mandatory denial of payment for new admissions sanction if the facility has not achieved substantial compliance within 3 months from the date of the finding of noncompliance. In such a case, if the facility is still not in compliance with requirements within 6 months from the date of the finding, we will terminate its provider agreement. Also, we may impose one or more other remedies, as determined by us or the State, in accordance with part 488, subpart F.

Facility failure to meet acceptable standards of performance, including failure to transmit the MDS data, or failure to otherwise improve upon its past poor performance, or failure to transmit or to maintain compliance relative to this reporting requirement could be considered by us to be indicative of the facility's inability or unwillingness to perform the resident assessment itself. We believe that this is a reasonable conclusion because if the requirement to conduct a resident assessment has been satisfied and completed, then the administrative reporting requirement would simply and logically follow. Noncompliance that is repeated or which recurs intermittently becomes part of the facility's noncompliance history which is a factor when we or the State selects the appropriate enforcement response. We will sanction, accordingly, a facility that demonstrates little or no commitment to continual, rather than cyclical, compliance. A State will be easily able to ascertain whether a facility is transmitting the required information timely and in the manner that we prescribe, those facilities that fail to meet the standard may be subject to the full range of available remedies, including denial of payment for new admissions and civil money penalties. We do not expect perfection relative to compliance with this reporting requirement; we will incorporate limited tolerance into the compliance assessment process, whereby good faith efforts made by facilities will be considered. An additional level of tolerance will exist during early phases of implementation of the requirement.

*Comment:* A number of commenters addressed a wide variety of issues relating to the computerization of MDS information. A State commenter stressed that we should emphasize the benefits to facility staff and residents. A consumer advocacy group expressed the belief that we should address how computerization will affect utilization of the RAPs and the individualization of the care planning process.

*Response:* As mentioned in the previous discussion of data uses, we believe that the automation of this information will be extremely helpful to facilities. We note that computerization of resident assessment information does not relieve facilities of their responsibility to develop, by an interdisciplinary team, a comprehensive, individualized care plan. While software packages exist that will automatically print a plan of care based on responses to MDS items that trigger a RAP, an individual must still exercise professional clinical judgment in customizing the care plan to suit each resident's individual needs.

*Comment:* Commenters proposed that we develop regulations and manual instructions relating to transmitting data. A State wanted a telecommunications program to be mandated. Another State expressed the belief that we should penalize facilities which do not comply with submission requirements.

*Response:* Once we develop key specifications for data transmission, we will issue clarifying policy and give instructions to States and providers in a State Operations Manual transmittal. We will require that a facility comply with the policy and regulations covering this data base in order to participate in the Medicare and Medicaid programs. As mentioned above, we are requiring that a facility electronically transmit its data via telecommunications infrastructure to the State. Penalties for not complying with submission requirements are addressed with the comments on proposed § 483.20(b)(6), Automated data processing requirement.

*Comment:* Some commenters discussed software vendors who have developed RAI packages. Commenters suggested that we develop a program to test vendor software for minimal acceptability.

*Response:* We are developing several aids to promote the accuracy of RAI software packages developed by commercial vendors. These efforts include the following documents and data files, being published on our World Wide Web site (at http://www.hcfa.gov/Medicare/hsqb/mds20/) and otherwise available from us.

- Detailed specifications for data validity (valid ranges and consistency requirements for MDS items).
- Detailed logic and a test data base for RAP determination.
- Detailed specifications for the file structure, record layout, and field formatting for MDS files submitted by facilities.
- Detailed logic, a test data base, and a test program for Resource Utilization Group calculation.

We are also developing a standard State-level MDS processing system to be distributed to each State. One feature of this system allows RAI software developers to transmit test files of MDS data to the State and receive a detailed log of all data validity errors encountered in the test file.

We will continue to promote processes for assuring the accuracy of software packages developed by vendors even though the approaches to this effort will change over time.

*Comment:* In the preamble to the proposed rule, we encouraged comment on developing a mechanism for advising us on the need and method to update the MDS and RAPs. Commenters agreed that we do need a method to update the RAI. Several suggested that we establish a clinical advisory panel or commission similar to the project team, clinical panel and advisory committee that developed the RAI. Other ideas included an annual update schedule, including any changes in the MDS as an addendum; sending periodic questionnaires to providers, State agencies and organizations; and a yearly comment period.

*Response:* We have always recognized that the RAI will need to reflect advances in clinical practice and assessment technology. We will be making periodic revisions to the RAI. In 1994, we awarded a contract to the

Hebrew Rehabilitation Center for Aged, under which we will revise the RAI over a few years. The contractor will convene representatives of States, provider organizations, professional associations, and consumer organizations. These groups will advise us regarding the need to add or refine items or definitions, and regarding areas that are less well understood, and require clarification. As in the past, the revision process will be one in which we seek input from the many interested and affected groups.

*Comment:* We solicited comment on how to coordinate the assessment process with other assessment protocols such as home health assessments and the uniform needs assessment instrument (comments on coordinating with PASRR are discussed with the comments on proposed § 483.20(b)(5), Coordination). Some who commented merely agreed that it is necessary to coordinate assessments. Others gave suggestions, for example, that we issue a stronger directive that a facility provide a copy of the MDS as part of their post-discharge care, use the RAI in all long-term care settings, and coordinate with the home and community based waiver MDS of OBRA '90.

*Response:* We recognize the need to coordinate an individual's health care across various health care settings and the importance of assessments in this process. Currently, we have no statutory authority to require this coordination except in the case of coordination of the RAI with preadmission screening programs for individuals who are mentally ill and mentally retarded. However, there is great interest in the development of clinical data sets like the MDS for several provider types, including end-stage renal disease facilities and home health agencies. Work is well underway to develop screening tools in some of these areas.

§ 483.20(b)(1) Resident Assessment Instrument

*Comment:* Commenters addressed the proposed requirement that the assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff on all shifts. Most supported the requirement. A few commenters were concerned with enforcement of the requirement. Some wanted us to require that the facility communicate with the resident only when clinically feasible, since the resident may not have the cognitive skills to verbally communicate.

*Response:* The resident is a primary source of information when completing the assessment and may be the only source of information for many items. In the RAI User's Manual and in the State Operations Manual, Transmittal No. 272, we have instructed facility staff to talk with and observe the resident. It is still possible to interact with a resident, even if he or she is unable to communicate verbally. Staff can closely observe the resident and respond to many MDS items based on observation. We acknowledge that evaluating facility compliance may be difficult but we believe that this requirement is too important to delete. However, we do not want to require a specific process for documenting collection of data across shifts. This would burden facilities and limit their flexibility to implement a process that is most appropriate for each facility's specific situation and practices.

*Comment:* A few commenters believed that only the direct care staff responsible for providing care to the resident on all shifts should be included in the assessment process. Others wanted us to require that the facility talk to other people, such as a resident's family members/guardians, the attending physician, and other licensed personnel.

*Response:* We did not limit the assessment process to only those staff members responsible for actually providing hands-on care because we believe that facility staff who are not the primary care-givers often have valuable, first-hand information about a resident. For example, housekeeping staff who routinely talk with residents may be aware that a resident prefers extra pillows on her bed because it alleviates her back pain. In the State Operations Manual Transmittal No. 272 and in the RAI User's Manual we suggest that information sources for the assessment should include, but are not limited to, discussion with the resident's attending physician, appropriate licensed health professionals and family members. Family members are a valuable source of information regarding the resident, particularly for cognitively impaired residents, for whom family is often the only source of information regarding the resident. For example; a resident's spouse may be the only person who knows what the resident was like prior to admission to the nursing home, and is able to provide background information that is necessary for staff to complete the Customary Routine section of the MDS.

We require that a physician be a part of the interdisciplinary team that prepares the care plan. We acknowledge that a doctor's schedule may not allow consistent participation in the assessment process. While we encourage facilities to discuss the resident's status with the attending physician to gain and validate information, we are not requiring it. The statute is silent regarding the participation of individuals other than health professionals.

*Comment:* Some commenters wanted us to clarify that communication with all shifts can be both verbal and written. For example, information could be exchanged at pre-shift meetings, through progress notes or other documentation in the clinical record, or by other means.

*Response:* We agree that information can be exchanged in a number of ways, and discuss possible mechanisms in the RAI User's Manual. At this time we do not wish to mandate a communication process; rather, each facility should determine how to best exchange information about the resident.

While we did not receive comments regarding the facility assessing the resident using the RAI specified by the State, we are adding to § 483.315(c) that the State must obtain our approval of a State-specified instrument. This is more consistent with sections 1819(e)(5) and 1919(e)(5) of the Act. Furthermore, we are specifying those domains or areas that the facility must assess. We listed these domains in the assessment requirement previously, and inadvertently omitted them at former paragraph (b)(2); a State suggested that removing the domains weakened the requirement. Additionally, surveyors use the regulatory tags for particular domains to cite deficiencies when a facility has problems only in certain assessment areas. The State is responsible for obtaining approval from us for its instrument and to specify its approved instrument to facilities. Facilities must therefore rely upon the State's assertion that the instrument is approved by the Secretary.

Proposed § 483.20(b)(2) When Required

*Comment:* Several commenters addressed our proposed requirement that a facility complete the comprehensive assessment within 14 days after a resident's admission. Some commenters agreed with the 14-day time period, and wanted us to emphasize that the RAI and quarterly review are a minimum, stressing that all the resident's needs must be identified and care planned as necessary. A commenter requested clarification regarding completion ''within 14 days after admission,'' stating that it could be interpreted differently. For example, the facility could construe the requirement

to mean ''14 days after admission'' or ''the fourteenth day of admission.''

*Response:* Completion of the RAI specified by the State does not necessarily fulfill a facility's obligation to perform a comprehensive assessment. As previously stated, § 483.25 requires that a facility ensure that each resident attains or maintains his or her highest practicable well-being. A facility is responsible for assessing areas that are relevant for individual residents, regardless of whether they are included in the RAI. For example, in completing the MDS, the assessor simply indicates whether or not a factor is present. If the MDS indicates the presence of a potential resident problem, need, or strength, the assessor should then investigate the resident's condition in more detail. The RAPs may assist in this investigation.

Other problems that are relevant for an individual resident may not be addressed by the RAI at all. For example, the MDS includes a listing of those diagnoses that affect the resident's functioning or needs in the past 7 days. While the MDS may indicate the presence of medical problems such as unstable diabetes or orthostatic hypotension, there should be evidence of additional assessment of these factors if relevant to the development of a care plan for an individual resident. Another example of resident concerns not addressed by the MDS is sexual patterns. Some facilities have responded by creating additional assessment tools which they complete for all residents in addition to the State RAI. This is not a Federal requirement. Additional assessment is necessary only for factors that are relevant for an individual resident. Facility staff have stated that many of the items added to version 2.0 of the MDS may eliminate the need for supplementation of items in facility specific assessments and will hopefully contribute to a more comprehensive assessment for each resident.

A facility is also responsible for assessing and intervening in response to acute or emergent problems such as respiratory distress or fever. While this may seem obvious, surveyors have reported numerous instances in which this has not occurred.

A facility must complete the initial assessment no later than 14 days after a resident's admission. For example, if a resident is admitted on July 1, the assessment must be completed by July 15. Although Federal requirements dictate the completion of RAI assessments according to certain time frames, standards of good clinical practice dictate that the assessment process is more fluid, and should be on-going.

*Comment:* A few commenters recommended that we require the assessment within the month that the annual is due and not a narrowly defined ''every 365 days.''

*Response:* The statute requires that a facility conduct an assessment no less often than once every 12 months. The facility should use the completion date of the last assessment (in other words, the date the registered nurse coordinator has certified the completion of the assessment on the RAP Summary form in section V) to calculate when the annual assessment is due. Current policy is that the next assessment is due within 365 days. As we are not aware of any problems regarding this policy, it will remain unchanged.

*Comment:* Commenters proposed alternatives to the requirement that a facility complete an initial assessment within 14 days of a resident's admission. A commenter suggested that a facility complete the MDS within 14 days of admission, and the RAPs and care plan within 7 days of completing the MDS (instead of completing the MDS and the RAP process in 14 days). This would allow adequate time to complete and document the in-depth assessment. Others believed that 21 days to complete the assessment and 30 days to complete the care plan is necessary.

*Response:* As mentioned above, the statute currently specifies the time frame for the initial assessment, which does not allow us any latitude. We have defined the RAI to include the MDS, triggers and utilization guidelines, including the RAPs. Since the RAPs are part of the comprehensive assessment, they too must be completed within 14 days after admission or detection of a significant change. Current care planning requirements allow 7 days after completion of the RAI for completion of the plan of care.

*Comment:* A consumer advocacy group suggested that we require an assessment similar to the quarterly review upon the resident's return from a hospitalization, since some change in the resident's condition had necessitated the hospital visit. Another commenter recommended that we require an assessment when the use of restraints for an individual increased over a prescribed threshold.

*Response:* We agree that it may be beneficial for the facility to complete another assessment upon return from hospitalization or upon an increase in restraint usage. An increase in restraint use is an example of a situation in which a significant change reassessment is probably necessary. If it becomes necessary to restrain a resident or increase restraint usage, it is likely that the resident's condition has deteriorated and there are behaviors of new onset or increased frequency. In this case, the facility must revise the care plan. If a resident's condition has significantly changed prior to or after hospitalization, the facility must complete a comprehensive, significant change assessment on the resident's return to the facility. Some facilities have instituted a policy requiring a comprehensive RAI assessment each time a resident is readmitted after hospitalization. We prefer, however, to leave our requirement so that it is based on what is clinically warranted (in other words, whether the resident's condition meets the definition of a significant change).

*Comment:* Several commenters, including some State and national provider organizations, were concerned with the impact that the 14-day requirement would have on facilities whose residents are typically short-stay, such as residents in hospital-based SNFs. A few wanted us to exempt facilities which have an average length of stay less than 30 days from having to complete the assessment. Others wanted all facilities to have 30 days in which to complete the assessment. Some commenters suggested that we develop an alternate instrument that pertains to the specific care needs of short-stay residents. For example, they maintained that the MDS does not contain enough detail on the rehabilitative aspects of care, nor does it capture important information about a post-acute resident's health conditions. Others proposed that we allow a facility to complete only those MDS items that are appropriate for short-stay residents and skip the rest. A few commenters wanted us to convene a clinical advisory panel that would assist in identifying the clinical characteristics of short-stay populations and determining which MDS elements are critical for them.

*Response:* From the comments received, it is evident that there are a variety of strategies that people believe would be useful in dealing with the assessment of short-stay residents. We cannot, under the law, extend the time frame for completion of the RAI. Nor can we currently exempt any facility certified under the long term care facility requirements, even though it may provide care exclusively or primarily for individuals needing a short period of rehabilitation prior to return to the community. While we are aware that this has long been a concern voiced by some providers, various

clinical experts have long believed that the majority of the RAI gathers useful information for short-stay individuals as well as long-term residents. In 1992 and 1993, we consulted with several panels of expert clinicians and health professional, provider, and consumer groups to identify MDS items that were not pertinent for short-stay individuals. Of the few items that the panels proposed as not being relevant for short-stay individuals, there was no consensus on eliminating items, with all groups in agreement that all individuals in certified facilities would benefit from the RAI assessment process.

We agree that the original MDS did not contain enough relevant information pertinent to short-stay populations. We have added some items to version 2.0 related to special therapies and care needs (previously included in the MDS+, an alternate RAI used by some States) that are very relevant for short-stay populations. A national association representing hospital-based skilled nursing facilities reported finding these MDS+ items useful in identifying nursing and therapy needs for short term stay residents and for determining Medicare coverage and subsequent reimbursement.

We have also added an item to collect information on pain that will assist facilities in providing more focused care for short-stay residents. Furthermore, we will clarify and add material to several of the RAPs specific to short-stay populations as part of our contract with the Hebrew Rehabilitation Center for Aged to refine the RAI, in an effort to facilitate a more effective and efficient assessment for these residents.

Moreover, as this concern has continued to be voiced by providers and as the number of individuals undergoing a short-term, generally rehabilitative stay in certified skilled nursing facilities has continued to increase, we have begun to revisit this issue. We are currently consulting with providers, consumer groups and professional associations for the purpose of informing them about our work on developing a module of assessment items that would be completed as an alternative to many of the core MDS items. In this way, probably through the use of the ''skip pattern'' logic in the MDS, facilities providing care for ''short term stay'' individuals could perform a standardized, reproducible assessment that is more relevant to the resident population, while still adhering to the statutory requirement to perform a comprehensive assessment based on the MDS.

*Comment:* Several commenters expressed the belief that the MDS is not appropriate or does not collect enough information for special care populations, like pediatrics, individuals with AIDS, individuals with head injuries, individuals who are terminal and are receiving hospice care, and properly placed residents who have mental illness or mental retardation. The concerns were similar to those who addressed short stay residents. A State provider organization asserted that the MDS is designed for a homogeneous, chronic long term care resident and suggested that we develop a variety of assessment parameters. Another State organization stated that 70 percent of the MDS+ elements do not apply to children. The commenter went on to say that about one-fifth of those that do apply are demographic in nature. Commenters noted that facility staff need to know what kinds of behavior usually heralded the onset of a psychiatric crisis for a resident with mental illness, and that the MDS does not sufficiently capture behavioral disorders, mood disturbances, activity potential, and cognitive functioning for individuals with mental illness or mental retardation. To address these concerns, commenters recommended that we:

- Waive special care populations from the RAI requirement;
- Develop additional RAPs to address specific needs;
- Develop additional MDS elements in modules for ''special care'' residents;
- Have skip patterns; or
- Develop a new instrument.

*Response:* We acknowledge that the MDS may not be completely responsive to the needs of special populations in nursing homes today. We expect to use MDS data to gain a better sense of the clinical characteristics and care needs of the diverse population of long term care facilities, and to refine the RAI as it appears warranted over time. In the meantime, some of the items that were added to the MDS are more responsive to the needs of these residents. For example, items that assess the presence, type, intensity, and treatment of pain were added to version 2.0; this is particularly important for residents in a hospice program. We have expanded significantly the MDS items associated with mood and behavior, and also included the use of programs for treatment of mood and behavior problems. Again, we note that the statute does not allow us to exempt certain populations.

*Comment:* A State commenter requested that we exempt terminal/hospice residents from RAI requirements since the philosophy of hospice care is vastly different from the rehabilitative approach of the typical nursing facility. Another State commenter noted that SNF/NF residents who are residents of a certified hospice will have two assessments and two care plans because of two sets of requirements; it is possible that the care plans may be conflicting.

*Response:* When a resident of a Medicare participating SNF/NF elects the Medicare hospice benefit, the hospice and the SNF/NF must coordinate, establish, and agree upon a plan of care for both providers which reflects the hospice philosophy and is based on an assessment of the individual's needs and unique living situation in the SNF/NF. This coordinated plan of care must identify the care and services that the SNF/NF and hospice will provide in order to be responsive to the unique needs of the individual and his or her expressed desire for hospice care. The plan of care must include directives for managing pain and other distressing symptoms and be revised and updated by the SNF/NF and hospice, as necessary, to reflect the individual's current status.

Our policy is that when a resident of a SNF/NF elects to receive Medicare coverage of services under the hospice benefit, both the Medicare hospice conditions of participation and the SNF/NF requirements apply. This means that the facility must assess a resident using RAI. Some confusion arose among the SNF/NF providers concerning the completion of RAPs that were not clinically appropriate. We have issued a clarification memorandum reminding providers that the RAPs are guidelines for assessment. They are not meant as prescriptive courses of actions. Rather, they are intended as frameworks for assessment that are clinically indicated depending on the needs of each individual resident. For example, some of the RAP guidelines may include content suggestive of an aggressive work-up to determine causal factors that may not be appropriate for individuals who are terminally ill (for example, an aggressive work-up to determine the cause of weight loss would generally not be appropriate or expected for a resident receiving hospice care.) Many of the RAPs, however, such as ''Activities'' or maintenance of the resident's ''Activities of Daily Living'' should lead to more aggressive assessment if they are useful in helping facility staff increase the resident's comfort level and ability to attain or maintain his or her highest practicable well-being and create an atmosphere in which the resident will be able to die with dignity.

It is important to remember that RAP documentation and the plan of care may also reflect a resident's right to refuse treatment or services.

In summary, we developed the RAPs to assist facilities in planning appropriate and individualized care for residents. As we revise the RAP guidelines over the next few years, we intend to incorporate material specifically related to terminal care to better address the needs of the hospice residents residing in SNF and NFs.

*Comment:* Some commenters wanted changes in the proposed definition of ''readmission.'' One asked for clarification of what a ''temporary'' absence meant, asserting that a 5-month absence could be temporary for someone who has lived in the facility for 10 years. A State provider organization thought that ''temporary absence'' should not be defined only as a hospitalization, but should allow for other absences like doctor's visits.

*Response:* We do not consider it to be a temporary absence when a resident leaves a facility for a doctor's visit; we do not require that a facility conduct a new assessment merely because of such a visit. Readmission is defined as a resident returning to a facility from the hospital or therapeutic leave. We consider an absence to be temporary when the facility fully expects the resident to return. For example, if a resident leaves the facility for a few days during a holiday season, the nursing home would not need to complete a new assessment (unless there has been a significant change). If the resident is absent for an extended period of time, however, it may be difficult for the facility to determine if a significant change has occurred, and the facility may wish to conduct an assessment. Furthermore, if the resident is absent for a year or more, the facility must conduct its annual reassessment upon the resident's return. However, we are not attaching a time frame to temporary absence. This holds regardless of where the resident went and how long he or she was absent from the facility. This policy recognizes that there is variation in bed hold and discharge policies in the States.

*Comment:* A few commenters expressed concern with the proposed provision in § 483.20(b)(2)(i) that would allow a facility to amend assessment information up to 21 days after admission in some situations. One commenter thought the entire MDS was amendable. A national provider organization recommended that we permit a facility to correct ''technical'' items on the MDS beyond the 21st day because these items would not alter the triggers or RAP process.

*Response:* In the past, we had not allowed a facility to correct non-factual errors once the assessment was completed. Rather, these non-factual errors were to be noted elsewhere in the resident's clinical record (for example progress notes). A facility corrected non-factual errors on the next assessment (in other words quarterly, annual, significant change). A facility needs to complete a new MDS when the non-factual error would have an impact on the resident's care plan. In this case, a facility should perform another comprehensive assessment (in other words the MDS and RAPs) within 14 days of noting the error. We would note that non-factual errors associated with a resident's assessment and significant change associated with the resident are two different concepts; however, both can result in completing a new comprehensive assessment. As discussed below, we are deleting the 21-day provision.

*Comment*: A State provider group disagreed with our proposed delineation in § 483.20(b)(2)(i)(B) of categories within the MDS that can be amended, because the commenter did not believe that facilities and surveyors would be able to consistently differentiate which items on the MDS could be changed. The commenter proposed changing the requirement to read ''Further resident observation and interaction indicates a need to alter the initial assessment.''

*Response*: The provision to amend certain sections within 21 days has been confusing for facilities. We are deleting the 21-day provision. We require that a facility complete the MDS and RAPs within 14 days of a resident's admission, within 14 days of a significant change in a resident's status, and at least annually. By the fourteenth day, the registered nurse must sign and date the RAP Summary form to signify that the assessment is complete, within regulatory time frames. Within 7 days of completing the assessment, the facility must:

- Encode the MDS and RAP summary in a machine readable format;
- Run the encoded MDS through edits specified by us. The facility must correct any information on the encoded MDS that does not pass HCFA-specified edits.

Within 7 days of completing the assessment, the facility must be able to transmit the edited MDS and RAP Summary form to the State according to State or Federal time frames. Therefore, the facility must:

- ''Lock'' the edited MDS record;
- Certify that the MDS meets HCFA-specified edits; and
- Print the edited MDS and RAP Summary form and place them in the resident's record. The hard copy of the assessment must match the assessment that the facility transmits to the State. A facility must, therefore, correct the hard copy to reflect changes associated with the edit correction process.

We believe that this change eliminates the confusion for facilities as to what sections could be changed. It will also decrease the number of corrections the facility will have to make and subsequently transmit to the State due to changed assessment information.

In § 483.20 (b)(2)(ii) and (b)(2)(iii), we proposed that a facility must assess current residents of a nursing facility by October 1, 1991 and residents of a skilled nursing facility by January 1, 1991. We are deleting paragraphs (b)(2)(ii) and (b)(2)(iii) because these requirements are no longer necessary. They were necessary when the proposed regulation was written to make sure that individuals already residing in long term care facilities were comprehensively assessed according to the new requirements.

*Comment*: There were many comments related to the definition of significant change at proposed § 483.20(b)(2)(iv). Commenters proposed amendments to the definition, deletions to the definition, and additions to the definition. These comments follow.

Several commenters were concerned that the definition leaves too much room for interpretation and were particularly concerned about how this would be evaluated during the survey process. One commenter pointed out that the definition for significant change leaves much to the professional judgment of the surveyor to decide what constitutes a significant change. A few suggested that we delete ''or should have determined'' from the criterion for significant change because it invites surveyor second-guessing of facility multi-disciplinary staff judgment long after the fact.

Other comments related to the notion of permanency in the definition. Commenters asserted that the distinction between acute and chronic changes is often difficult to determine, and that the emphasis on permanency of the change is too exclusive. Some commenters preferred the language in the State Operations Manual at Appendix R or in the original RAI Training Manual. They believed that there is inconsistency between the proposed regulation and the State Operations Manual training manual, for example, the definition of ''permanent.''

Commenters wanted us to clarify what permanent means. Another requested that we delete ''permanent'' and ''apparently permanent'' from the criterion, and that we add ''is significant (major) or likely to be permanent.'' The commenter believes that this will be more consistent with the State Operations Manual Transmittal No. 250, which contains surveyor guidelines and protocols.

A commenter was concerned about whether the examples of significant change in the proposed regulation were intended to be all-inclusive, and believed they should be expanded and clarified. For example, the commenter believed that the regulation should clarify what a ''sudden improvement in resident status'' means.

A few commenters, including a national and a State provider organization, recommended that we change proposed paragraph (b)(2)(iv) to read ''within 14 calendar days after the facility determines * * * that there has been a significant decline or improvement in the resident's physical or mental condition such that in the clinical judgment of the assessor the change in condition appears to be major or permanent.'' They believed that this wording would be more consistent with the original training manual.

A few commenters believed that proposed paragraphs (b)(2)(iv) (A) and (G) are redundant. One commenter was confused as to which elements of the MDS the facility reviews in determining if a significant change has occurred according to the criterion at paragraph (b)(2)(iv)(A). A consumer advocacy organization wanted paragraph (b)(2)(iv)(A) to read ''Apparent permanent deterioration or improvement in two or more activities of daily living or apparent deterioration or improvement in any combination of two or more activities of daily living, communication or cognitive abilities.''

A few provider organizations wanted the criterion revised to read ''Deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic.'' This wording would be more consistent with the original training manual.

A few recommended that we delete ''requires staff intervention'' or else clearly define the phrase. Commenters suggested that we change the wording to ''benefits from staff intervention.'' One believed that the criterion should not be limited to situations requiring staff interventions because there may be instances in which deterioration is not perceived by staff as disruptive or detrimental, and staff would, therefore, not intervene. For example, staff would not intervene, in the commenter's scenario, in a case in which a resident is depressed and whose behavioral presentation is passive.

One suggestion was to reword paragraph (b)(2)(iv)(D) to read ''A marked or sudden deterioration in a resident's health status * * *''. This would clarify that this criterion does not include the expected clinical progression of a given diagnosis or condition.

A few commenters suggested that we delete paragraph (b)(2)(iv)(D) because it is too subjective. One commenter stated that this criterion would have surveyors citing facilities for everything; for example, just the fact that the resident is old means that their life may be in danger of ending.

A commenter suggested deleting ''a factor associated with'' at paragraph (b)(2)(iv)(E) because it does not add anything to the definition. Others offered suggestions for clarifying the criterion at paragraph (b)(2)(iv)(E). A few commenters proposed adding ''* * * that has not responded to treatment in the last 14 days,'' which would give the clinician a time frame in which to evaluate the effectiveness of an intervention. Another commenter proposed adding ''* * * that has not responded to treatment within clinically accepted time period standards.''

A national provider group proposed that we delete the criterion at paragraph (b)(2)(iv)(F) and replace it with ''improved behavior, mood, or functional health status to the extent that the established plan of care no longer matches what is needed by the resident.'' The commenter believed that this would confine the definition of change to a functional measure and focus the criteria on a positive outcome.

A commenter suggested that we add two criteria to paragraph (b)(2)(iv): ''(iv)(H) Potentially reversible deterioration in mental functioning due to suspected delirium. (iv)(I) Deterioration in a resident's family or social circumstances which places the resident's psychosocial well being in danger.'' The commenter believed that the criteria, as published in the proposed rule, do not identify changes that may be temporary, but which could be noteworthy. Furthermore, the commenter does not believe that enough attention has been paid to the psychosocial aspects of change.

One State commented that the definition should not be in the regulation text, but should remain in interpretive guidelines, asserting that it will affect the objectivity of the assessors in determining significant changes since these guidelines will become more concrete.

*Response:* These substantial comments regarding significant change assessments warranted extensive evaluation of the definition for significant change assessment. Over the past several years, we have been providing clarification regarding the significant change reassessment requirement in surveyor training and other training that we have conducted, as well as through verbal and written communication to States and providers. We believe that it is necessary to include the definition of significant change in the regulation text. However, the definition contained in this final regulation is dramatically altered from that which appeared in our proposed rule, largely in response to the comments we received and the collective experience of providers and States since implementing the RAI process in 1990. This changed definition will remain in the regulation text to reinforce a facility's responsibility to conduct significant change reassessments.

A key to determining whether a significant change has occurred is whether the resident's status has changed to the extent that the plan of care no longer reflects the resident's needs and the facility's plan to address them.

We are revising the definition of significant change, as follows: A significant change means a decline or improvement in a resident's status that will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both. An example of a condition that will normally resolve itself without intervention by staff is a resident's 5 pound weight loss, which would trigger a significant change reassessment under the old definition. However, if a resident had the flu and experienced nausea and diarrhea for a week, a 5 pound weight loss may be an expected outcome. If the resident did not become dehydrated and started to regain weight after the symptoms subsided, a comprehensive assessment would not be required. Generally, if the condition has not resolved at the end of approximately 2 weeks, staff should begin a comprehensive assessment.

A significant change reassessment is probably indicated if decline or improvement are consistently noted in two or more areas of decline, or two or more areas of improvement:

Decline

- Any decline in activities of daily living physical functioning in which a resident is newly coded as 3, 4 or 8 (Extensive assistance, Total dependency, Activity did not occur);
- Increase in the number of areas where Behavioral Symptoms are coded as ''not easily altered'' (for example, an increase in the use of code 1 for E4B);
- Resident's decision-making changes from 0 or 1 to 2 or 3;
- Resident's incontinence pattern changes from 0 or 1 to 2, 3 or 4, or placement of an indwelling catheter;
- Emergence of sad or anxious mood as a problem that is not easily altered;
- Emergence of an unplanned weight loss problem (5 percent change in 30 days or 10 percent change in 180 days);
- Begin to use trunk restraint or a chair that prevents rising for resident when it was not used before;
- Emergence of a condition or disease in which a facility judges a resident to be unstable;
- Emergence of a pressure ulcer at Stage II or higher, when no ulcers were previously present at Stage II or higher; or
- Overall deterioration of resident's condition; resident receives more support (for example, in activities of daily living or decision-making).

Improvement

- Any improvement in activities of daily living physical functioning where a resident is newly coded as 0, 1 or 2, when previously scored as a 3, 4 or 8;
- Decrease in the number of areas where Behavioral Symptoms or Sad or Anxious Mood are coded as ''not easily altered;''
- Resident's decision-making changes from 2 or 3 to 0 or 1;
- Resident's incontinence pattern changes from 2, 3 or 4 to 0 or 1; or
- Overall improvement of resident's condition; resident receives fewer supports.

We may revise this list over time, eliminating or adding items as well as other situations that meet the significant change definition. In an end-stage disease status, a full reassessment is optional, depending on a clinical determination of whether the resident would benefit from it.

We believe that this definition is clearer than the proposed definition. It also addresses many of the commenters' concerns, including noting that the change can be for improvement or deterioration, and eliminates the need to interpret whether a change is permanent.

A self-limited condition is a condition that will run its course without intervention. It is of limited duration. Because this implies a decline in status, we are retaining the phrase, ''a sudden or marked improvement.''

*Comment:* Commenters requested that we specify that the time limits for reassessments begin once the assessor makes a clinical determination that the change in resident status is permanent, major, or both (in other words, within 14 days). This would prevent an inconsistent outcome.

*Response:* In paragraph (b)(2)(iv), we proposed that the facility must conduct the reassessment within 14 days after the facility determines that a significant change has occurred. We are retaining this provision (in § 483.20(b)(2)(ii)).

*Comment:* Some commenters addressed the overall goal of reassessments due to significant change. One commenter stated that the clinical goal should be to identify functional changes and evaluate their source. Early identification of illness, injury, etc., may allow intervention to reverse and prevent permanent loss of function. The commenter cautioned that the evaluations can be expensive and counter-productive. Others maintained that some changes are the natural result of the aging process or of disease processes like Alzheimer's disease. Some believed that these changes can be anticipated and care planned without conducting a new assessment. A commenter wanted us to add a new criterion to the definition for potentially reversible deterioration in mental functioning due to suspected delirium.

*Response:* We believe the commenter's suggestion for a new criterion is included under the new definition. The primary role of the RAPs, which a facility also must complete for a significant change reassessment, is to help the facility to identify causal or risk factors that can be eliminated or minimized. Completing the RAP process helps the facility determine what services the resident needs. It would be more costly if the facility does not detect a significant change and the resident is allowed to decline. The resident could develop complications from the onset of a health problem or require hospitalization. Furthermore, significant change reassessments will help the staff to determine if a change is the expected result of a disease process or could be reversed. Such would be the case in a drug-induced delirium.

*Comment:* A few commenters thought that the final regulation should allow for consultation with a physician (the medical director, for example) to determine the significance or permanence of a resident's change. Therefore, they maintained, the facility staff would not have the responsibility to make the determination and would not be cited for it.

*Response:* We encourage consultation with physicians, but it is not our intent to absolve facilities from their responsibility to monitor resident status. The statute requires that a registered nurse conduct or coordinate the assessment. The registered nurse, by virtue of licensure requirements and State practice acts, has responsibility for assessing and monitoring an individual's status, and notifying a physician, as is warranted by changes in the individual's status.

Proposed § 483.20(b)(3), Quarterly Review (Redesignated as § 483.20(c))

*Comment:* Several commenters discussed the proposed quarterly review requirements. Most agreed that a facility should assess a resident at least quarterly. A few, including a State, wanted us to mandate the use of a standard form. They believe that this would provide consistency.

*Response:* OBRA '87 required that a long term care facility examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's care plan. We are accepting the recommendation to mandate a standard instrument. Not only will this provide consistency across the nation, but it will facilitate computerization of the quarterly review assessment items. In keeping with the Federal requirement for a uniform resident assessment instrument, the Quarterly Review form is considered part of the RAI. States may modify this form or use an alternate instrument by submitting a request to us. However, each State's Quarterly Review form must include at least those items on the HCFA Quarterly Review form.

*Comment:* One commenter said that the requirement for a quarterly assessment should be taken in the spirit of four times a year and not a rigid every 90 days. This would allow the facility to be flexible so that a resident's health status or the facility schedule could be taken into account.

*Response:* If a resident is experiencing a transient condition or is out of the facility when his or her quarterly review is due, the facility can wait until the resident's condition stabilizes or the resident returns to the facility. The facility should document the circumstances associated with the delay in conducting the quarterly review. Regarding timing of the quarterly review, we draw from the statutory language, which states that the facility must examine each resident no less

frequently than once every 3 months. This is also consistent with the regulations in effect prior to the publication of the proposed regulation. We would also point out that the calculation of when the quarterly review is due based on when the last assessment or quarterly review completed by the facility. For example, if a facility completed a quarterly review March 1, and completed a significant change reassessment April 15, the facility must complete the next quarterly assessment no later than July 15. If there had not been a significant change, the next quarterly assessment would have been due no later than June 1.

*Comment:* A few commenters wanted us to provide that the quarterly review determines if a comprehensive reassessment is necessary. Furthermore, they stated that the care plan may need to be revised as a result of the quarterly assessment. One commenter proposed that quarterly reviews must also review any section of the MDS relevant to problems triggering or found in the assessment.

*Response:* The purpose of the quarterly review is to ensure that the resident assessment data is accurate, and that the facility continues to have an accurate picture of the resident, in order to monitor and plan care. If the quarterly review indicates that a significant change has occurred, the facility needs to conduct a comprehensive reassessment. This also applies to the comment proposing a requirement to review other areas in the MDS if the quarterly review finds a problem. The facility is not limited to only reviewing the required portions of the MDS that comprise the quarterly review. While we encourage facilities to review any section that might be relevant to an individual resident, we are not requiring at this time that a facility review particular sections. We are providing in § 483.20(d) that the facility must revise the plan of care when indicated by the assessment.

*Comment:* Several commenters wanted additional MDS items or sections required as part of the quarterly review. One commenter thought that the quarterly review should include the entire MDS, providing additional longitudinal information for an outcome-based quality assessment system. Some commenters wanted all or a portion of Section N, Skin Condition, from the MDS+, added. One commenter noted that skin condition is a vital part of nursing care and the resident's psychosocial well-being. Others wanted at least one item added from former Sections B, Cognitive Patterns, C, Communication/Hearing Patterns, E, Physical Functioning and Structural Problems, F, Continence in Last 14 Days, H, Mood and Behavior Patterns, K, Health Conditions, L, Oral/Nutritional Status, and P, Special Treatments and Procedures.

*Response:* We are not requiring that a facility complete the entire MDS on a quarterly basis, as we thought the additional burden this would impose was not warranted clinically. Based heavily upon suggestions submitted by commenters, we have added several items to the quarterly review, including an item on skin condition. The primary use of the quarterly assessments is to regularly ensure that the care plan is responsive to the needs of the resident. A secondary use of the information collected through quarterly assessments is that of quality monitoring at the resident and facility level. Some of the items on the quarterly review form have been identified as quality measures. An example of a quality indicator is urinary incontinence. The MDS item H.1 is one of the items that we use to monitor quality of care associated with urinary incontinence. A mandated quarterly review assessment will provide for the consistent collection and use of such data.

We are also requiring that a facility transmit its quarterly review assessment records to the State. There are several reasons for this. Analysis of resident-level data over time is necessary to generate quality measures (in other words, a quality indicator system requires quarterly assessment data for each resident). As noted in the discussion on establishment of the national data base, a facility can identify opportunities to improve its own outcome and care practices through the quality measures. Quarterly data will also help a facility in its quality assurance program. Furthermore, if MDS data is to be used for quality monitoring purposes by surveyors, it must be timely. This means that we must require facilities to transmit their quarterly review records, in addition to admission, annual and significant change assessments, in order to use MDS data in the long term care survey process. Leading researchers and survey experts in this area believe that quarterly data is absolutely necessary for the timely and reliable identification of resident outcomes, both at the facility level and the resident level.

Proposed § 483.20(b)(4) Use (Redesignated as § 483.20(d))

*Comment:* A few commenters requested a definition of maintaining ''all resident assessments.'' They were confused as to whether this meant just the MDS, or also the Identification Face Sheet, documentation of the quarterly reviews, the RAP Summary sheet, and information pertaining to the decision to proceed to care planning.

*Response:* ''All resident assessments'' includes all the documents mentioned by the commenters—all MDS forms (Sections AA through R, and V—the RAP Summary Form), the Quarterly Review forms, and Discharge and Reentry forms. The RAP Summary form indicates which RAPs were triggered, whether care planning was done for each of the RAP conditions, and where data from the RAP assessment process is documented.

We also require that a facility complete a subset of items when a resident is discharged, which includes identifying information about the resident, the type of discharge and the destination upon discharge. As mentioned in the discussion on the national data base, we are also requiring that the facility transmit this information to the State and to us. This will allow for the closure of a resident's current stay at the facility. Furthermore, we are requiring that a facility complete a subset of MDS items upon a resident's reentry to the facility (§ 483.20(f)). This will allow the facility to ''reopen'' the resident's record in the facility system as well as at the State and national levels.

*Comment:* We requested that the public advise us on what the requirements should be for facilities to keep a hard copy of the MDS on a resident's file if the assessment is computerized. A few commenters urged us to allow flexibility. One pointed out that society is making large strides toward paperless environments, and a Federal regulation should not inhibit such progress. Other commenters thought that a hard copy should remain in the resident's record even if the assessment is computerized. Commenters recommended that hard copies stay in the record for 2 years, as the proposed regulation discussed. Another commenter suggested 1 year. A consumer advocacy group noted that hard copies should always be accurate because it is the copy most likely to be used by direct care staff. A State said that a hard copy on the record is essential because appropriate staff may not always be available to retrieve data from the computer. A few commenters did not want us to require that a facility keep a hard copy of the MDS in a resident's active record. Commenters believed that paper records are expensive to maintain, and it should be acceptable if a hard copy were readily

accessible to staff, residents, and surveyors. A State commenter thought that a coding system would need to be created to handle old assessments and reassessments. Commenters submitted other ideas. One suggestion was to keep the original MDS on the chart and not require a computerized copy. Another was to allow either the original or a computerized version. A State suggested printing a hard copy at the time of survey, and that all electronic assessment records should be created according to the intervals called for under the MDS. The commenter believed that the computerized system should be able to save or change information as needed. Another State said that we should require no further storage of a hard copy version once the facility produces and transmits a computer version.

*Response:* In order to be used as intended, by clinical staff at all levels, we believe that it is necessary for the facility to keep a hard copy in the resident's record of all assessments for the past 15 months. This issue is also discussed in responses to comments on § 483.20(b)(5). We agree that direct care staff would be most likely to use a hard copy of the assessment, and believe that it would be problematic for clinical staff to be expected to retrieve assessments from the computer, both in terms of their ability and willingness to do so and also having the necessary equipment available on all clinical units. Unless all charting is computerized, we believe that a facility should maintain RAI assessments as a part of the resident's clinical record. However, if a facility has a ''paperless'' system in which each resident's clinical record is entirely electronic, the facility does not need to maintain a hard copy of the MDS. To qualify for this exception, the facility's MDS system must meet the following minimum criteria:

- The system must maintain 15 months' worth of assessment data (as required in § 483.20(d)) and must be able to print all assessments for that period upon request;
- The facility must have a back-up system to prevent data loss or damage;
- The information must always be readily available and accessible to staff and surveyors; and
- The system must comply with requirements for safeguarding the confidentiality of clinical records.

Furthermore, the facility must maintain evidence that identifies the Registered Nurse Assessment Coordinator and other staff members that completed a portion of the assessment.

*Comment:* Commenters expressed concern with the proposed requirement to maintain assessments from the previous 2 years on the resident's clinical record. One stated that the intent of this requirement is unclear, as it does not appear to serve any purpose for facility staff in care planning, in that facility staff will be using the most recent assessment information they have to aid them in the development of the care plans. According to commenters, maintaining 2 years' worth of assessment data in the resident's active record would be too bulky and cumbersome. It could even add to facility costs associated with purchasing large chart binders and chart racks. One commenter stated that the full 2-year cycle of a resident would have approximately 42 pages of assessment documentation in the chart. If the resident had two episodes of ''significant change'' in that time period, this would add an additional 18 pages. Commenters maintained that a thick record would be prohibitive and intimidating, adding that quantity does not always translate into quality.

Several commenters maintained that surveyors look at only the previous year's assessment information. Also, the MDS does not require that the assessor look back over more than 180 days, so 1 year's worth of data would be sufficient. They stated that earlier assessment information would be easily retrievable from the record if needed. Commenters asserted that medical information that is more than 12 months old is likely irrelevant and outdated. A commenter believed that the regulation's intent could be met if historic materials were retrievable and available to the assessor during the reassessment and course of care. A commenter suggested that we require that the facility maintain all full comprehensive resident assessments completed within a 12-month period in a resident record. One commenter wanted the 2-year requirement to be effective on the date of the final rule.

*Response:* The original intent of the proposed requirement was to enable a facility to better monitor a resident's decline and progress over time. We are not able to determine if requiring that a facility maintain assessment information for a 2-year period has facilitated the analysis of this longitudinal data. We believe that the information is necessary to evaluate the resident's plan of care, but have decreased the required time period to 15 months of assessment records, since the survey cycle allows for up to 15 months between surveys. Additionally, computerizing MDS records will allow a facility to access prior assessments in a timely and more efficient manner.

*Comment:* A professional organization did not believe that 2 years of assessment data was enough to capture a decline in the resident's status and thought that we should require a facility to maintain 3 years of assessment data. Another suggestion was that we require a facility to maintain at least two comprehensive assessments in the record with the appropriate quarterly review and RAP summary forms.

*Response:* Requiring that a facility maintain assessment data on a resident's record for 3 years would be too cumbersome for most facilities; however, a facility can maintain as many years of assessment information as it likes. It is possible that having this amount of longitudinal data would be helpful for a facility in tracking resident progress. However, we are only requiring that a facility keep 15 months of the documentation associated with the RAI in the resident's active record.

*Comment:* Commenters requested that we permit a facility to keep prior assessment data in a ''thinned'' chart or another appropriate location as opposed to on the active chart. A few commenters did not feel that we should mandate where the facility keeps documentation. Commenters suggested that we revise the requirement to provide that the facility must maintain in active status all resident assessments completed within the previous 2 years and use the results of the assessments to develop, review and revise the resident's comprehensive plan of care.

*Response:* As stated above, we are revising the regulation to require that a facility maintain 15 months of assessment records. We would note, however, that a facility need not store assessment data in one binder to meet this requirement. A facility may choose to maintain the data in a separate binder or kardex system, as long as the information is kept in a centralized location and is accessible to all professional staff members (including consultants) who need to review the information to provide care to the residents. It is not acceptable for the assessment data to be stored where staff cannot easily use it.

*Comment:* Another suggestion was we require the facility make available the 2 years of data within 1 hour of request.

*Response:* We emphasize that the primary purpose of maintaining the assessment data is so that a facility can monitor resident progress over time. The information should be readily available at all times.

Proposed § 483.20(b)(5) Coordination (Redesignated as § 483.20(e))

Comment: Commenters addressed the proposed requirement that the facility coordinate the assessment with any State-required preadmission screening program. Most who addressed this issue agreed that coordination was needed to prevent duplicative efforts, particularly as part of the Level II PASRR. Some, including States and provider organizations, stated that the responsibility for coordination should be a State function and not the facility's responsibility, noting that a facility has little or no control over the screenings. One commenter noted that the facility should not be penalized during a survey because the State mental health authorities are unable to do appropriate plans of care. A commenter requested that we not mandate this coordination because, in most States, coordination will be extremely difficult to accomplish. A commenter suggested that we provide, instead, that the facility coordinate assessments to the maximum extent possible.

*Response:* We agree that coordinating the MDS with Federal PASRR requirements, to the extent practicable, will prevent duplicative efforts and the unnecessary expenditure of resources. The proposed regulation required that the facility coordinate ''to the maximum extent practicable'' with the PASRR program and we are retaining this language as is.

With respect to the responsibilities under the PASRR program, the State is responsible for conducting the screens, preparing the PASRR report, and providing or arranging the specialized services that are needed as a result of conducting the screens. The State is required to provide a copy of the PASRR report to the facility. This report must list the specialized services that the individual requires and that are the responsibility of the State to provide. All other needed services are the responsibility of the facility to provide. The PASRR report also lists some nursing facility services the State PASRR evaluator recommends for the facility to consider including in the plan of care. We note that the survey agency should not cite a facility when the State fails to fulfill its responsibility. However, if a facility fails to fulfill its responsibilities to, for example, prepare fully developed care plans, then the survey agency may cite it.

We would also like to point out that the requirements relating to the preadmission screening and annual resident review program were amended on October 19, 1996 by Public Law 104–315. In summary, the legislation amended section 1919(e)(7) of the Act by removing the Federal requirement for the annual resident review. Section 1919(b)(3)(E) of the Act was also amended by the addition of a requirement that a nursing facility notify the State mental health authority, mental retardation, or developmental disability authority, as applicable, promptly after there is a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded. Finally, the legislation amended section 1919(e)(7)(B) of the Act to require that the State mental health or mental retardation authorities conduct a review and determination after the nursing facility has informed them that there has been a significant change in the resident's physical or mental condition. In developing regulations to implement the new provisions of the law, we will try to ensure that States and facilities are not be subjected to duplicative requirements or the unnecessary expenditure of resources.

*Comment:* Commenters were concerned that the condition of a resident may necessitate a new comprehensive assessment done earlier than annually, which would be administratively problematic for State mental health authorities trying to coordinate their reviews.

*Response:* From the beginning of the PASRR program, a significant change in the condition of a resident with mental illness or mental retardation has required a judgement call to be made concerning whether an annual resident review was necessary. While this requirement may initially have caused some difficulty in scheduling, these procedures should already be in place.

*Comment:* A few commenters submitted suggestions as to specific ways that the RAI and PASRR could be coordinated. One suggested that we expand items 11 and 12 in the former Section I, Identification Information, which pertain to mental health history and conditions related to mental illness or mental retardation. Another suggested that we grant psychologists the same status under these regulations to practice to the full extent of their licensure as has been recognized under the PASRR regulations. One commenter believed that Level II screening could serve as part of the cognitive, psychosocial, mood, and behavior RAPs. A State commenter recommended that the mental health authority use the MDS for nursing decisions to refer someone into the community mental health system for further review. Another commenter proposed that the facility forward a copy of the MDS to the State mental health authority, and that relevant information from hospital admissions be incorporated into the MDS.

*Response:* There are several elements of the MDS that could assist in determining if the resident has mental illness or mental retardation and whether nursing home level of care or specialized services, or both, are necessary. We have changed the language in the Section AB, Demographic Information of the MDS to be consistent with PASRR language and definition regarding mental illness and developmental disabilities. We will further consider the coordination of the RAI and PASRR in the development of the regulations to implement the new legislation.

*Comment:* A commenter suggested that we add paragraph (b)(5)(i), which would provide that State mental health and mental retardation authorities may determine for those residents whose mental status and/or intellectual functioning has remained stable over a 2-year period, based on annual resident review criteria, as defined under subpart C, § 483.100 *et seq.*, and on-site evaluation and record review, whether the data contained in the annual RAI/MDS is sufficient to make a determination of continued need for NF services and/or specialized services, or whether further evaluation is required. The commenter believed that much of the information needed for Level II screening can be obtained from the RAI, especially for long-standing nursing home residents with mental illness or mental retardation. The State mental health authority would still be making the determination of level of services as required under the PASRR requirements.

*Response:* We agree, as noted above, that the RAI data may serve as the basis for State mental health and mental retardation authorities to evaluate and make determinations about the need for NF care and for specialized services. However, section 1919(e)(7) of the Act prohibits a State mental retardation authority and a State from delegating their responsibilities to a nursing facility or to an entity that has a direct or indirect affiliation or relationship with a facility. However, those responsible for conducting the evaluations should use applicable up-to-date data from the MDS.

*Comment:* A State commenter suggested including results of the PASRR reviews on the MDS, for example the dates of the reviews, special needs, dates of recent

hospitalizations, and whether the resident needs specialized services.

*Response:* We encourage facilities to keep the results of a resident's PASRR with his or her MDS. We are not mandating that a facility record PASRR information on the MDS. The decision about how much information to share with a facility is up to the State's discretion, as is the choice of assessment instrument and the coordination of the various assessments. We believe that a State should have the flexibility to determine what a facility must retain.

*Comment:* A State commenter submitted several MDS elements that help them identify residents who have mental illness or mental retardation (including a list of ICD–9 codes recorded in the former Section J that would indicate a developmental disability). The commenter noted that RAI software exists that enables them to make this determination. Other MDS items are useful in deciding if someone is exempt from PASRR because of terminal illness, dementia, or a severe medical condition.

*Response:* We concur that several MDS items would be helpful in identifying residents with mental illness or mental retardation. We encourage States to develop or refine PASRR programs, or individuals performing surveys of the facilities, as well as those conducting preadmission screening under Public Law 104–315, to use the information to the maximum extent possible. We disagree with the commenter who suggested that an individual with a terminal illness, dementia or a severe medical condition is exempt from the screening requirements. We believe the commenter misconstrued the current requirement at § 483.130, which permits a State to make advance group determinations when included in an approved State plan. Categorical determinations are categories for which the State mental health or mental retardation authorities may make an advance determination that nursing home services or specialized services are needed for an individual with mental illness or mental retardation. These categories may include cases in which the resident has received convalescent care after an acute physical illness that required hospitalization and do not meet the criteria for an exempt hospital discharge. Dementia is not considered a serious mental illness for the purposes of PASRR. Therefore, a person with a primary diagnosis of dementia would not be considered to have mental illness and would not be subject to PASRR screening (unless he or she is also mentally retarded).

Proposed § 483.20(b)(6) Automated Data Processing Requirement (Redesignated as § 483.20(f))

*Comment:* Several commenters believed that the proposed October 1, 1994 date for capability of computerization was unrealistic. A national provider organization stated that, based on the regulation process and time frames, it was possible that we would require that the systems be in place before the final rule was published, and this would be unfair. Commenters offered alternative dates, which included an implementation date of October 1, 1995; at least 2 years from the effective date of the final rule; and postponing implementation until a reimbursement mechanism is in place. Another suggestion was that we publish a rule specifically on computerization.

*Response:* We agree that an implementation date for facility computerization of October 1, 1994 should be deferred until June 22, 1998.

To redesignated § 483.20(f), we are adding the requirement that a facility transmit at least monthly to the State all assessments completed in the previous month. This includes admission assessments, significant change reassessments, annual reassessments, quarterly reviews, and information captured upon reentry to the facility, transfer, discharge and death. We are requiring the latter information for a number of reasons. States that are already computerized have noted that this information is required to close out the resident's record at the State level for the facility from which the resident was discharged. We are aware that there are some States which, for Medicaid payment purposes, must know where Medicaid recipients are every 24 hours. Information upon reentry, transfer, discharge and death will allow State and Federal agencies to analyze long term trends in resource utilization, particularly in regards to movement across various types of care providers. Additionally, discharge information will permit facilities to close out residents' records on their system. In the State Operations Manual, we will provide facilities with instructions on which MDS items must be completed to document this information. Furthermore, as discussed elsewhere, we believe that the information will provide facilities with invaluable data they can use in a variety of ways.

*Comment:* A State commenter asserted that we should develop penalties for non-compliance regarding the computerization requirement. The commenter questioned whether the penalties would fall on individual facilities, States, or both. The State suggested that, as an alternate to penalties, we could provide monetary incentives for timely and accurate submission.

*Response:* The requirements to encode the assessments in a machine readable format and transmit the information to the State are like all other requirements that a facility must meet to participate in the Medicare and Medicaid programs. We believe that computer-aided data analysis facilitates a more efficient, comprehensive and sophisticated review of health data. Manual record reviews, on the other hand, are labor intensive and more time consuming, and may, therefore, tend to be more occasional or anecdotal. Additionally, utilization of the quality measures and other types of quality monitoring, such as observation of trends and patterns, is enhanced through computer aided data analysis.

Facility noncompliance with requirements established by this final rule will be subject to the full range of enforcement remedies set forth in part 488, subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies. However, at a minimum, we will require that a facility complete a plan of correction and we will impose the mandatory denial of payment for new admissions sanction if the facility has not achieved substantial compliance within 3 months from the date of the finding of noncompliance. Further, if the facility is still not in compliance within 6 months from the date of the finding, we will terminate its provider agreement. We may impose one or more other remedies, as determined by us or the State in accordance with part 488. Additionally, noncompliance that is repeated or that recurs intermittently becomes part of the facility's noncompliance history, which is a factor when we or the State selects the appropriate enforcement response. A facility that demonstrates little or no commitment to continual, rather than cyclical, compliance will be sanctioned by us accordingly. We are not offering incentives for timely and accurate submission at this time, but may consider such a concept as we revise the survey process.

Proposed § 483.20(c) Accuracy of Assessments (Redesignated as § 483.20(g))

Proposed paragraph (c) described the requirements regarding who conducts and coordinates the assessment, certifying its completion and accuracy,

and penalties for knowingly and willfully falsifying the assessment. In this final rule, we are redesignating content of proposed paragraph (c) related to accuracy of assessments as paragraph (g), coordination, as paragraph (h), certification, as paragraph (i), and penalties for falsification, as paragraph (j).

Proposed § 483.20(c)(1) Coordination (Redesignated as § 483.20(h))

*Comment:* Commenters requested clarification on the definition of ''health professionals.'' Some, including a State commenter, wanted to know if nurse aides who are on the State's nurse aide registry could complete and document portions of the assessment.

*Response:* A licensed health professional, as defined at § 483.75(e), includes a physician, physician assistant, nurse practitioner, physical, speech or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker. Furthermore, the definition of nurse aide, at § 483.75(e), specifically excludes licensed health professionals.

A facility may assign responsibility for completing the RAI to a number of qualified staff members. It is the facility's responsibility to ensure that all participants in the assessment process have the requisite knowledge to complete an accurate and comprehensive assessment. In most cases, participants in the assessment process are licensed health professionals. Some State licensure and practice acts specifically prohibit nursing assistants, and in some cases licensed practical nurses, from conducting assessments. While nurse aides certainly can and should contribute their knowledge of the resident to the assessment process, nurse aides typically are not trained in specific assessment skills, some of which require a significant amount of knowledge.

*Comment:* A commenter stated that staff that are mandated to complete certain sections of the assessment, like gait and movement, behavior, and aspects of incontinence, do not have the appropriate skills, clinical experience, or training to understand and assess the issues involved. The commenter stated that surveyors lack this expertise and training also.

*Response:* We are not requiring that specialized professionals complete any sections of the MDS. As stated in the previous response, a facility must ensure that staff conducting the assessment have the requisite knowledge to accurately complete the assessment. We disagree with the generalization that facility staff and surveyors do not have the skills and training necessary to accurately assess residents. We conduct a significant amount of training for surveyors on how to gauge the accuracy of assessments. Provider groups and facilities also conduct training in these areas.

*Comment:* A commenter expressed concern that requiring the participation of professionals other than registered nurses could place a burden on a facility that does not employ staff in certain disciplines. The commenter recommended that the we combine the requirements for coordination and certification to provide that each assessment must be conducted or coordinated by a health professional, in cooperation with other health professionals, as desired, and that a registered nurse must review, sign and certify the completion of the assessment.

*Response:* See previous responses. We do not require the participation of specialized professionals other than registered nurses. The personnel participating in an assessment are determined by the needs of the individual resident. For someone who has significant rehabilitation potential, for example, it would be reasonable for a physical therapist to conduct part of the assessment. It is acceptable, though, for a registered nurse to conduct the entire assessment as long as it is accurate.

*Comment:* A consumer advocacy organization suggested that we prohibit the use of assessment nurses hired solely for the purpose of completing the MDS and who have no relationship to care provided. This suggestion was based on a reference in the preamble to the proposed rule (p. 61633) to staff who have clinical knowledge about the resident, such as staff nurses.

*Response:* The requirements for care planning state that a registered nurse with responsibility for the resident be a part of the interdisciplinary team that prepares the care plan. This implies that the registered nurse is directly involved in the resident's care and is fully knowledgeable about the resident. We believe that the assessment is conducted most accurately and efficiently in conjunction with the registered nurse who has primary responsibility for the resident's care. We believe that this is in line with the intent of Congress. However, it would be beyond our purview to prohibit ''assessment nurses.'' A facility is required by the statute to complete an accurate assessment.

An evaluation of the RAI process, conducted by the Research Triangle Institute in 1993, under contract with us, indicates that it is rare for a facility to designate a sole staff member to conduct the entire assessment. Registered nurses, who are often the primary assessors get substantial contribution from others in at least some MDS domains, even in facilities which designate an ''assessment specialist nurse.'' We cannot necessarily state that a nurse hired solely to conduct assessments does not have the necessary clinical knowledge. Additionally, the survey process would detect inaccuracies in the assessment if an assessor did not have the necessary clinical knowledge to accurately complete resident assessments.

Proposed § 483.20(c)(2) Certification (Redesignated as § 483.20(i))

*Comment:* Commenters suggested that we require that an individual who completes portions of the assessment date his or her signature. This would also apply to the assessment coordinator when he or she signs and certifies the completion of the assessment.

*Response:* We agree with this suggestion and have changed the form to reflect this.

Proposed § 483.20(c)(3) Penalty for Falsification (Redesignated as § 483.20(j))

*Comment:* Commenters, including a national provider organization, supported the distinction between clinical disagreement and false statements. A commenter requested a definition of clinical disagreement. One commenter expressed concern regarding guidelines for surveyors and protections to ensure hard copy validity. For example, if there is oversight in completing a section of the MDS, but the registered nurse signs to certify completion, we could cite the facility for falsification. A commenter also suggested that clinical disagreement on the RAP Summary form does not constitute a material or false statement.

*Response:* It is the responsibility of the nurse coordinating the assessment to make sure that the MDS is complete before he or she certifies completion. Failure to do so could result in a deficiency, based upon information gathered by the surveyor.

For purposes of this regulation, clinical disagreement pertains to coding an item based on observation of the resident over time and on clinical judgment. If, based on observation, one nurse codes a resident as needing supervision for locomotion while another nurse codes the same resident as needing limited assistance based on her observation, we would consider that

to be clinical disagreement and not falsification. However, if an assessor were to complete the assessment without observing the resident and gathering data, we would consider that to be a material and false statement. Clinical disagreement applies to the entire RAI, including the RAP Summary form, and care planning decision making process. The survey process is not intended to usurp clinical decisions from the facility.

§ 483.315 Specification of Resident Assessment Instrument

This section describes requirements for the States in specifying a resident assessment instrument. It also lists the components an instrument must contain if a State wishes to specify an instrument other than the Federally designated RAI.

Our December 28, 1992 proposed rule placed the entire MDS and instructions for its use in the regulation text. The proposed rule also required that a facility encode the MDS in a machine-readable format, in accordance with HCFA-specified formats. We are removing the MDS from the regulation text. Because the law requires a standard assessment, the regulation mandates that a State instrument contain, in its exact form, the contents of our designated instrument, as set forth in the State Operations Manual. This instrument is comprised of the MDS and common definitions, the triggers and utilization guidelines (including resident assessment protocols (RAPs)). We will ordinarily not approve an instrument that does not contain the HCFA-designated resident assessment instrument (RAI). The States may add items to the Federal instrument, but may not change the MDS items, definitions or triggers, delete any items, or alter the utilization guidelines pertaining to the RAPs. This is necessary for the standardization and consistency required by law. We believe that removing the MDS from the regulations text is advantageous. It will allow us to easily modify the MDS so that it requires collection of information that is clinically relevant and meets evaluative needs as clinical practice evolves. By directly discussing and negotiating with affected parties, it will be possible to maintain a resident assessment process that reflects current standards of clinical practice while obtaining public comment.

It has always been our intent that we would revise the RAI on an ongoing basis to reflect changes in clinical practice and advances in assessment technology. The first revision of the MDS and RAPs, known as version 2.0, was published in Transmittal No. 272 of the State Operations Manual in April, 1995, and is contained in the preamble of this rule. For the purpose of this rule, State and provider requirements related to the RAI pertain to the most current version of the RAI that has been published by us (that is, presently dated 10/18/94H, but subject to future revision). We expect to publish revisions to the RAI, such as new or revised RAPs, in the State Operations Manual no more frequently than annually, in order to minimize the burden on providers of transitioning to a revised RAI.

We believe that the regulatory provisions that we are including in the final rule adequately describe the fundamental MDS requirements and that the form and details of the MDS are best set forth in interpretive issuances. This will permit us to easily modify details such as the measurement scales for a particular condition, or the symptoms that may be relevant to that condition, and to respond to advances in clinical standards.

We relied heavily on public comments received on the proposed rule in modifying the MDS and RAPs contained in version 2.0 of the RAI. We also drew on the expertise of a small work group comprised of representatives of three States that had extensive experience in working with the industry to successfully implement the RAI requirements. In this way, we were able to address ''real world'' concerns as well as misinterpretations regarding individual MDS items. We also received comments on a draft of the revised RAI during a public meeting with national associations representing nursing home providers, professional disciplines and consumers on December 10, 1993. Under HCFA contract, Dr. John Morris of the Hebrew Rehabilitation Center for Aged led the RAI revision effort from 1993 to 1994 and oversaw field testing.

Proposed § 483.315(a) State Responsibilities (Redesignated as § 483.315(c))

*Comment:* A State commenter noted that 30 days to specify an instrument after we designate or change its instrument is not enough time. The commenter stated that the survey agency would need to coordinate with the State Medicaid agency. Furthermore, any change to the HCFA-designated RAI would require the State to study the benefits and costs of modifying the State-specified RAI vs. the revised HCFA-designated RAI, notifying and training facilities, modifying computer systems, etc. The commenter suggested 180 days. For the aforementioned reasons, a commenter recommended that providers have advance notice of changes to the RAI. Another commenter asked if we would extend the time without specifying the number of days.

*Response:* We agree that 30 days may not be enough time for a State to decide whether to adopt our changes or seek approval for an alternate instrument. However, we believe that the commenter's recommendation of 180 days is too long. Therefore, we are changing the requirement to give States 90 days to decide whether they accept our changes or wish to specify an alternate.

*Comment:* Commenters questioned whether the State would be required to seek approval from us to re-adopt our forms every time we make a revision to the forms. One commenter asked if a State that has already specified the HCFA-designated RAI will now have to respecify it. Commenters suggested that a State that has specified our instrument should be expected to automatically adopt any revisions without additional paper work.

*Response:* Our State Operations Manual Transmittal No. 272 contains information on a State's responsibilities related to respecification of its RAI. We require that a State notify us of its intent to use our revised RAI or alternate instrument and specify the effective date for its use. A State will continue to respecify its instrument whenever we change the Federally-designated RAI. This enables us to monitor when a State decides that it no longer wishes to use our instrument. As the quarterly review form is now part of the Federally-designated RAI, we require a State to specify the form to their facilities or to include an alternative form in the package that it submits to us.

*Comment:* Commenters suggested revisions to paragraph (a)(2). A commenter wanted to change ''* * * State must assure implementation'' to read ''must assist with implementation of RAI through training and technical assistance.'' The commenter stated that training and technical assistance does not ensure implementation, and proposed that we add paragraph (a)(2)(I), which would provide that States must assure implementation of RAI through the survey process. Another suggested that we require that the State ensure facility implementation by providing the necessary technical direction and education and training to facilities at least annually. This would accommodate changes in facility and surveyor staff, facilitate proficiency and maintenance of assessment skills.

*Response:* We accept an amended version of the first two suggestions. We are providing in § 483.315(c)(3) that, after specifying an instrument, the State must also provide periodic educational programs for facility staff to assist with implementation of the RAI. This parallels sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act. We acknowledge that training does not necessarily mean implementation. We do not wish to specify intervals at which training must be conducted. Training should be based on provider needs and should be targeted to focus on identified facility weaknesses. We do not wish to take away State discretion in this area. We are also providing in § 483.315(c)(4) that a State must audit implementation of the RAI through the survey process. Furthermore, we are reordering the text to be more sequential in regard to the action the State must take.

*Comment:* A commenter stated that the proposed requirement at § 483.315(a)(3) could have a negative impact on facility assessment and care planning schedules. The commenter suggested that we permit a facility to use its current RAI until we approve an alternative. Another commenter requested that we allow States 180 days to secure approval for an alternative instead of the proposed 4 months.

*Response:* It appears that the commenter misunderstood when we would require a facility to implement a newly specified RAI. A facility does not have to use a newly specified RAI or State alternate RAI until the date that the State requires it, which would be well after the State receives approval from us. Once the State receives our approval for an alternate instrument, the State must specify the instrument for use in all Medicare and Medicaid certified long term care facilities. The State would need a realistic implementation time frame which would not unreasonably have an impact on facilities. This time frame should accommodate training and the absorption of change.

With respect to the proposed requirement that States have 4 months to obtain our approval, we are eliminating the time frame entirely. The time frame was necessary initially when States were specifying instruments for the October, 1990 implementation of OBRA '87. Furthermore, our experience working with States that are developing alternate instruments is that a State may require more than 4 months.

In § 483.315(a)(4), we proposed that, within 30 days of receiving our approval of an alternate RAI, the State must specify the RAI for use by all Medicare and Medicaid facilities. We are changing the requirement to allow States 60 days to specify the instrument to their long term care facilities (redesignated § 483.315(c)(2)). This will give the State time to contact each of their certified facilities as well as reproduce the form for distribution to them. Additionally, we are deleting the provision that says that HCFA approval of an alternate RAI continues for 2 years. Our experience shows that many States make changes to their instrument on a more frequent basis.

*Comment:* A few commenters questioned whether a State would need to notify us if it redesigns the RAP Summary sheet.

*Response:* Since the RAP Summary sheet is part of the State-specified and HCFA-approved RAI, the State would need to obtain our approval to alter the sheet. Since we are removing the MDS from the regulations text, we are making substantial changes to § 483.315, which addresses the contents of the HCFA-designated RAI. We are adding to the regulations text the major domains contained on the revised MDS. This reemphasizes the statutory mandate that alternate instruments contain at least all the MDS elements. For the same reason, we are also listing the assessment domains addressed in our RAPs.

Proposed § 483.315(c) Secretarial Approval (Redesignated as § 483.315(g))

*Comment:* Commenters suggested that we delete this paragraph. According to commenters, if States are allowed to reorder sections of the MDS, use other RAPs, etc. it would be difficult to have consistency in data collection and submission to us. The commenter suggested that we require a State that wants an alternate instrument to include a HCFA section that would incorporate our system.

*Response:* We agree with the commenters' suggestion to delete most of the content of proposed paragraph (c). We are replacing it with a provision that requires the State's alternate instrument to comply with the standard format, vocabulary and organization requirements set forth in the State Operations Manual (redesignated paragraph (g)). There are a number of factors that warrant consistent ordering of data and assessment items across all States. First, nursing home chains that operate facilities in a number of States would benefit from some consistency in the ordering of the MDS items, if not simply to facilitate effective use of their training and education resources. Second, software vendors would also welcome standardization of the ordering of the MDS items in all States, as many of them market their software to facilities throughout the country and to nursing home chains that operate in a number of States. It also would minimize the effort in revising their software. Third, we could also achieve consistency in training State surveyors on use of the RAI. Fourth, educational materials, resources, and education programs for nursing homes and schools that prepare health care professionals could be developed more cost-effectively and distributed more widely with some consistency in how the MDS is ordered. Finally, data submission to us and States will require standardization in the ordering of the MDS items. Therefore, to facilitate standardization across States, we are requiring consistent ordering of MDS sections. We will require that States desiring to add additional data and assessment items, add those items in section S of the MDS, which has been designated as the section for State-specific items.

*Comment:* A few commenters thought that we should convene a clinical advisory panel to evaluate any alternate RAPs that States submit. They were concerned that the proposed supporting documentation could merely be the consensus of the same experts who designed the alternates. This would not protect the scientific integrity of the assessment system.

*Response:* We will convene a clinical panel periodically to evaluate the need to modify the RAI, and to review and evaluate newly developed RAPs, including those developed both by us and States. The process by which State-developed RAPs are submitted for our approval is also described in the State Operations Manual. We intend to have an open, inclusive revision process.

*Comment:* Commenters suggested that we require that any alternate instrument be cross-validated with the MDS on a large sample of residents. States should submit the data from the cross-validation to us for comparison of outcomes between States who use the HCFA-designated RAI and those that do not.

*Response:* Alternate instruments must contain all MDS items. This negates the need to cross-validate with the MDS. We have reviewed the revised items and new items added to the MDS for face validity, and we tested the individual items in early 1994. We encourage States to field test and validate the new items, as well as allow review by other qualified individuals prior to including the additional items on their instrument and submitting it for approval.

*State Requirement to Establish a Data Base of Resident Assessment Information*

Consistent with the purpose of the proposed rule and, after considering the comments submitted, we are adding a new paragraph (h) to § 483.315, which delineates State requirements in establishing a data base of resident assessment information. In the proposed rule, we posed questions about the State's role in collecting and maintaining the RAI data base, and we concluded that specific requirements are necessary to ensure uniformity. Furthermore, we believe these requirements are necessary to successfully design and implement a national data base of resident assessment information. Paragraph (h) includes provisions for specifying a transmission method for a facility to send information to the State, specifying edits that the data must pass, and provisions to transmit the data to us. A State will also be responsible for resolving incorrect data submitted by a facility. While the facility will edit the data before transmission to the State, the State, which has already computerized assessment information, may note that the data transmitted is not entirely complete or accurate, and must send it back to the facility for correction. Additional edits at the State level will help identify incorrect assessment information.

A State must edit the data it receives from a facility according to formats we specify, but may add State-specific edits that do not cancel or interfere with HCFA-specified edits. This will help ensure that the data we receive is uniform, complete and accurate. Furthermore, we are requiring that a State generate reports and analyze data, as specified by us. For example, we could require States to run a profile of each facility, which would allow the facility to analyze the prevalence of a certain medical diagnosis amongst its residents.

For a number of reasons, as discussed below, we are requiring each State to use a complete system that is developed or approved by us. We will develop a single, open system by which States will manage and analyze data. We believe that there are a number of advantages to standardizing both the data analysis and the data management functions which outweigh potential disadvantages.

Cost

Initial system costs will be substantially reduced by producing a single system versus funding the development of 50 different systems.

Ongoing maintenance costs will be substantially higher if States implement their own proprietary MDS systems. The costs associated with modifying individual State systems to incorporate changes in the MDS or HCFA specifications, formats or edits would be 50 times those associated with modification of a standardized system and distribution of new software or other specifications to each State.

Additional cost savings for data analysis activities will be realized by us. Given that we envision standardizing the State data analysis function, system standardization at the data management level will ensure that the necessary infrastructure to support data analysis is already in place. If States develop proprietary data management systems, we would probably have to fund additional system/structural costs when our proposed data analysis requirement becomes effective.

Data Reliability

It would be difficult to maintain quality controls and ensure adequate data reliability across 50 State systems. For example, each time we issue a change in transmission specifications or data fields, each of 50 States would have to modify their proprietary systems to accommodate the requirement. Past experience with MDS software vendors, as well as other Federal systems, demonstrates that there is a great degree of variation in the ability of vendors or agencies to consistently implement system changes. This would pose a serious threat to the long term integrity of the national MDS data repository. Standardization would ensure that changes are implemented completely, reliably, timely and in a coordinated manner across all States.

Programmatic Needs

Our desire to implement an MDS data-driven long term care survey process based on quality measures cannot be efficiently realized without standardization at the initial ''data management'' level. Assuming that we are redesigning our provider survey model as an automated, data-driven system, each survey agency will have to be able to integrate directly with the State MDS repository. If each State has a unique design for this repository, this integration will not be possible in a cost-effective manner. Each State would have to use HCFA-developed MDS data format specifications to extract MDS data into the standardized survey system. Allowing the development of 50 State proprietary systems would also result in long term inefficiencies in that each State would be required to rewrite their data extraction procedures each time we want to make a change to the survey process, quality measures or in the MDS itself. Even if we had unlimited resources for State customization, this would have a serious impact on our ability to introduce changes in a timely and consistent manner.

*HCFA Initiatives to Implement Standardized Clinical Data Sets*

These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care, while at the same time, reducing procedural burdens on providers. Quality assessment and performance improvement rests on the assumption that a provider's own quality management system is the key to improved performance. Our objective is to achieve a balanced approach combining our responsibility to ensure that essential health and quality standards are achieved and maintained with a provider's responsibility to monitor and improve its own performance. To achieve this objective, we are now developing revised requirements for several major health care provider types. All of these proposals are directed at (1) improving outcomes of care and satisfaction for patients, (2) reducing burden on providers while increasing flexibility and expectations for continuous improvement, and (3) increasing the amount of, and quality of, information available to everyone on which to base health care choices and efforts to improve quality. We note that our revised approach to quality assurance responsibilities is closely linked both to the Administration's commitment to reinventing health care regulations and to our own strategic plan. These initiatives have three common themes. First, they promote a partnership between us and the rest of the health care community, including the provider industry, practitioners, health care consumers, and the States. Second, they are based on the belief that we should retain only those regulations that represent the most cost-effective, least intrusive, and most flexible means of meeting our quality of care responsibilities. Finally, they rely on the principle that making powerful data available to consumers and providers can produce a strong nonregulatory force to improve quality of care.

The MDS is the first of several clinical data sets we envision creating and implementing in various care settings. Standardized information on clinical

status and health care outcomes is necessary for more objective and focused quality monitoring. Consequently, interest in standardized clinical data sets has skyrocketed, with much activity occurring in this arena in both the public and private sectors. We view our efforts with the MDS as a prototype for the next several years, during which we propose to build and implement clinical data sets across several provider types. These data sets will feed into quality indicator systems, which will supplement our traditional survey processes. At this point, we are beginning work on designing a comprehensive standardized assessment tool for home health agencies as well as field testing the uniform needs assessment instrument, which we are evaluating for use by all providers and view as forming the ''core'' of all care-setting specific data sets. Additionally, we propose development of standardized patient process and outcome measures for the End Stage Renal Disease program and a standardized instrument for the Intermediate Care Facility for the Mentally Retarded program in fiscal years 1996–97. In view of these initiatives, it would be much more economical and efficient to put in place now, within each State, standardized system designs and structures to support increased clinical data management and analysis. Otherwise, we will be responsible for funding and coordinating State efforts to implement data systems for each provider type as we implement new requirements.

In the system design process we explored several options, particularly regarding State systems and gathered a significant amount of information about current status of State systems. For example, we sent two questionnaires to the States to determine whether they had developed an MDS system, what the configuration might be, and what sort of direction and assistance non-computerized States would want from us. We convened several meetings across the country which were attended by more than 45 States. At these meetings we presented the concept of standardization. Reaction was quite supportive. We are aware that States which already have systems will have to make significant adjustments and will provide assistance in the process.

## III. Provisions of the Final Rule

In summary, in this final rule, we are adopting, without change, the provisions of the proposed rule with the exception of the following.

- We are adding greater specificity to the proposed requirement that each facility establish a data base of resident assessment information and transmit MDS data to the State at least monthly (§ 483.20(f)).
- We are adding a new requirement that each State establish a data base of resident assessment information received from facilities, using a system to manage and analyze data that is developed or approved by us, and transmit that information to us at least monthly (§ 483.315(h)).
- We are adding a definition of ''significant change'' in a resident's physical or mental condition to clarify when a facility must conduct a comprehensive assessment of a resident (§ 483.20(b)(2)).
- Instead of including the entire content of the MDS, the utilization guidelines for resident assessment instruments, common definitions, resident assessment protocols and instructions in the regulations text or in an appendix to the text, we are providing descriptions of the RAI, the MDS, and RAPs. We are providing a description of the assessment areas included in the MDS (§ 483.315(e)), and a description of the domains addressed in the RAPs (§ 483.315(f)), both of which must be included in the RAI specified by a State (§ 483.20(b)(1)).
- To address concerns about confidentiality of resident data, we are providing that a facility and a State may not release resident-identifiable information to the public, and may not release the information to an agent or contractor without certain safeguards (§§ 483.120(f)(5) and 483.315(j)).
- In this final rule, we are not adopting the proposed technical revisions to part 456 concerning inspection of care reviews of SNFs and ICFs. We will include these revisions in another document.

## IV. Regulatory Impact Statement

### *A. General*

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all nursing homes are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

### *B. Affected Entities*

We require that all certified nursing homes assess residents using a standardized data set known as the MDS. Nursing homes have been collecting this information manually since October 1990. Most States implemented a second generation assessment instrument, known as MDS 2.0, on January 1, 1996. The use of the MDS as the core of the comprehensive assessment requirement has improved the quality of nursing home services by ensuring that the assessment is consistently based on all information that is necessary to evaluate a resident's needs. Accurate and comprehensive resident assessments have improved the accuracy of the care planning process and, ultimately, the care provided by the nursing home. The myriad benefits associated with the MDS have been well documented in a study we commissioned to evaluate the outcomes of using the MDS. One of the more striking changes documented by the study was an association of the use of the MDS with a significant reduction in hospitalization among more cognitively impaired nursing home residents, without a concomitant increase in mortality. The study also identified major reductions in rates of decline (especially among various types of residents) in important areas such as nutritional status, vision, and urinary incontinence. However, in order to realize the full benefits of the MDS, the information needs to be computerized, and configurable as an analytical tool. Publication of this rule will allow this goal to be realized.

The automation and transmission of MDS data by nursing homes and States to us will improve the delivery of quality care in the nation's nursing homes in several ways. An automated MDS data base will provide information that will benefit both the policy and operational components of State and Federal governments, as well as furnish valuable information to long term care providers. The MDS system will also establish a means of providing consumers with quality-related information to make health care decisions.

More specifically, the MDS data base will enable us and the States to provide nursing homes with aggregated State and national resident status information and trends. This will allow nursing

homes to compare themselves to similar homes and is consistent with a quality improvement model. Furthermore, by establishing their own in-house quality assurance analyses from these computerized data, nursing homes will be able to evaluate the effectiveness of treatment modalities given a certain outcome. This type of information will assist nursing homes in making better use of their staff and other resources, and also eliminate the allocation of resources that do not achieve desired outcomes. In short, the MDS data base will provide nursing homes with the information to identify and correct their own problems.

States will have access to timely MDS data that will improve their ability to focus on-site inspection activities associated with the long term care survey process. Since we require MDS data for all residents regardless of payor source in nursing homes, these data elements can be configured into quality measures. The quality measures flag individual residents and facilities when there may be a problem with the quality of care provided. For example, the indicators may identify those residents who were admitted to a nursing home without pressure sores, but who developed sores in the nursing home. Similarly, a nursing home that has a relatively high percentage of residents with pressure sores may indicate a problem when compared to other facilities. This resource will significantly improve States' ability to identify areas of potential quality concerns in an effective and efficient manner, and facilitate the partnership of States and industry in identifying opportunities to improve care. At both the Federal and State level, information from the MDS data base will provide a valid and reliable tool for evaluating and improving the efficacy and effectiveness of survey and certification activities.

States have also identified a myriad of other intended uses for MDS data that include Medicaid payment, utilization review, preadmission screening and resident review, Medicaid coverage authorization, and State policy analysis and trending. It is our intention that a standardized MDS data system will support States' unique needs and should not necessitate the creation of distinct and duplicative data bases at the State level.

### *C. Costs Associated With Automating the MDS*

We anticipate that both nursing homes and States will incur some incremental costs from computerizing and transmitting the MDS. We estimate total start-up costs of $20.3 million, which represents costs incurred by nursing homes (we will be supplying the MDS systems directly to the States). We also estimate total ongoing annual costs of about $34.7 million, which includes $27 million in costs for nursing homes and $7.7 million in costs for States. Total costs include Medicare benefit costs of $9.5 million. Total costs also include an annual administrative cost of $3.5 million that will be absorbed within HCFA's program management appropriation. However, the benefits associated with computerizing the MDS far outweigh the additional costs of automating the data. The following represents our estimates of the individual costs associated with this effort.

#### Nursing Homes

Upon publication of this rule, all nursing homes must computerize the MDS. Most costs associated with computerizing the MDS will be related to hardware and software. At the current time, we estimate that approximately 70 percent of the nation's 17,000 Medicare, Medicaid or dually certified nursing homes have already computerized the MDS or have the capability to do so. Another 16 percent of nursing homes already have some kind of computer system that will require upgrading to meet the requirements for MDS, and only 14 percent have no computer system at all. Additionally, some facilities with currently operating MDS systems may require hardware and software upgrades to support aspects of the national MDS system (for example, a faster modem or installation of the Windows operating system).

Under the Balanced Budget Act of 1997, nursing homes will be reimbursed for Medicare under a prospective payment system for cost reporting periods beginning on or after July 1, 1998. Prior to July 1, 1998, costs incurred by nursing homes associated with computerizing the MDS will be paid on a reasonable cost basis. Generally, these costs are considered capital costs and are subject to the applicable Medicare rules. Additionally, it is likely that nursing homes will also incur certain routine services costs which will also be paid on a reasonable cost basis. These costs are subject to cost limits. In the past, the routine cost limits have included an add-on to account for the costs associated with the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), including the cost of conducting resident assessment. When a provider incurs cost related to OBRA 1987 that exceed its limit (including the add-on), we have allowed the fiscal intermediary to make an adjustment to the costs limits. This policy is described in a notice published in the **Federal Register** on October 7, 1992 (57 FR 46177).

The Balanced Budget Act of 1997 also prescribes a public process for the determination of rates for payment under Medicaid State Plans for nursing home services in which the proposed rates, the methodologies underlying the establishment of such rates, and the justifications for the proposed rates are published, thereby giving providers, beneficiaries and their representatives, and other concerned State residents an opportunity for review and comment. States have flexibility in designing the details of their payment systems for NF care, and to the extent that NFs incur costs in computerizing the MDS (such as the acquisition of hardware or software, staff training, or additional staffing), the State may take these costs into account in setting its rates.

- *Hardware:* We estimate total hardware costs associated with automating the MDS to be approximately $2,500 for a typical nursing home, which includes the computer and communications components capable of running MDS software and transmitting MDS assessments, and a laser printer. This estimate is based on the most recent cost data available for a system that includes an Intel Pentium processor. As noted earlier in this rule, we expect that only 14 percent of all nursing homes will need to buy an entirely new system. Seventy percent of all nursing homes are already using an automated MDS collection tool (although some may require upgrading in order to transmit the MDS data), and the remaining 16 percent already have some sort of computer system that simply requires upgrading.

The aforementioned cost estimate is based on the type of system that we anticipate many nursing homes will choose to purchase. At a minimum, a nursing home should have at least a 486 personal computer, either connected to a network or as a stand-alone, with 8 megabytes of RAM, at least 100 megabytes of available hard disk space, a 14 inch color monitor, keyboard, mouse, a 3.5 floppy drive and a laser printer. To operate the transmission software, this machine must run the Windows operating system, version 3.1 or higher. All nursing homes will also need a 28.8 Kbps modem for telecommunication of data, as well as a common data communications software package to transmit MDS assessments to the State. This communications package must meet our specifications related to

transmission of MDS data and represents current technology.

Ongoing hardware maintenance costs for nursing homes are expected to average about $100 annually.

- *Software:* Nursing homes desiring to meet only the requirement for data submission can use a less costly software package to accomplish the basic encoding and formatting functions. A nursing home must submit MDS records to the State that conform to a specific ASCII layout and incorporate them into files with header and trailer records that conform to required formatting standards. However, we anticipate that most nursing homes, seeking to gain efficiency in general operations, will choose more capable programs, some of which could be used to meet (1) other clinical or operational needs (for example, care planning, order entry, quality assurance, billing) or, (2) other regulatory requirements for reporting resident information. The standardized record formatting specifications and additional policies on MDS automation that we developed should be used by individual nursing homes, multi-facility chains, and software vendors to develop products for encoding and transmission of MDS 2.0 data. This information has been available to the public for about two years through the Internet, and is located on the HCFA Web site.

There are currently over 100 vendors marketing MDS software products. While we are not requiring record specifications and automation policies until this rule is published, we developed them earlier to provide guidance to the industry and to minimize the need for a facility to modify and replace systems once this regulation is published. At this time, we estimate that such software packages will be available on the market for approximately $1,250 for those nursing homes that have not yet become MDS automated. We expect that a nursing home's private sector software vendor will provide primary support to the facility in terms of MDS encoding and transmission to the State. State personnel, however, will work with facilities and software vendors in educating them about this process.

- *Supplies:* Supplies necessary for collection and transmission of data including diskettes, computer paper, and toner, will vary according to the size of the nursing home in terms of residents served and assessments required. Dividing the nursing homes into groups, supply costs are estimated at the following three levels: small facilities (with less than 145 residents), $175/year; medium facilities (with 145 to 345 residents), $225/year; and large facilities (with greater than 345 residents), $275/year.
- *Maintenance:* There are costs associated with normal maintenance of computer equipment, such as the replacement of disk drives or memory chips. Typically, such maintenance is provided via extended warranty agreements with the original equipment manufacturer, system reseller, or a general computer support firm. These maintenance costs are estimated to average no more than $100 per year.
- *Training:* Nursing home staff will need training on automating the MDS. Since many nursing homes will choose to have their staff input MDS data at the time of the resident assessment, we estimate that a typical nursing home will train two nurses for about 3 hours each. We expect that this training will be supplied by the vendor supplying the MDS encoding software, and estimates that the training will cost an average nursing home about $144 based on an average hourly rate for nurses of $24.

Other nursing home staff will need training in transmitting the data to the State and interpreting messages of record errors. We expect that this training will require about 3 hours of staff time, and will cost an average nursing home about $66, based on an average hourly rate of $12 for technical staff. This cost also includes travel expenses and travel time, since facility staff may need to travel to a centralized training site within the State (we anticipate that training will be provided in multiple sites in the State once the system is implemented). We expect that the State survey agencies will supply this training.

- *Data entry:* Nursing homes will have flexibility in the method used to enter data, but the method must comply with our requirements for safeguarding the confidentiality of clinical records. Data can be entered directly by a clinical staff member (that is, the nurse responsible for coordinating or completing the assessment), from a hard copy of a completed MDS by a clerical staff member, or by a data entry operator with whom the nursing home may contract to key in the data. We estimate that data entry staff could require approximately 15 minutes to enter each MDS. Nursing homes must collect and transmit MDS data, which for the admission assessment, annual updates, as well as significant changes in the resident's status, significant correction assessments, quarterly review assessments, which include a subset of the MDS items, discharge records, and reentry records. Additionally, nursing homes must allow time for data validation and preparation of data for transmission, as well as for correction of returned records that failed checks at the State data-editing level. We estimate that a 100 bed facility will incur an annual data entry cost of $1,250, (or $12.50 per resident per year), based on an estimate of five MDSs per bed (annual plus ''significant changes'') and an hourly rate of $10.
- *Data Transmission:* The State agencies will fund the costs of transmitting data from the nursing homes to their respective States. However, nursing home staff time must manage the data transmission function, correct communications problems, and manage reports logs transmitted from the State agency. We estimate that it will take an additional hour of staff time to perform data transmission related tasks each month. This staff time will cost an average size nursing home about $144 per year.

States

We expect that overall responsibility for fulfilling requirements to operate the State MDS system will rest with the survey agency. However, the State may enter into an agreement with the State Medicaid agency, another State component, or a private contractor to perform day-to-day operations of the system. If the State MDS system is operated by an entity other than the survey agency, the State must ensure that the survey agency has suitable access to this system to fully support all MDS-driven functions that the State will require of the survey agency (for example, quality indicator reporting, survey targeting). The State is also responsible for reporting MDS data to a central repository to be established by us.

States will primarily use the MDS data to focus the long term care survey process and to provide nursing homes and consumers with MDS-derived information. A State's MDS system includes the following components: computing hardware that includes data base, communication, supporting file, and print servers for client workstations; local and wide-area data networks; and application software for performing all aspects of MDS-related functions and tasks. As such, the MDS system will be designed and developed within a broad class of systems known as Client/Server architecture.

We plan to provide each State with a standardized hardware environment scaled to meet each State's anticipated processing volumes. Additionally, a standardized suite of software applications will be provided to each State to perform all MDS-related

functions, including receipt and validation of MDS records, posting of records to the master repository, and analytical applications to be used to inform and support the long term care survey process. A HCFA contractor will work closely with each State to customize the ''turn-key'' MDS system to integrate it into a State's current computer and network structure. The contractor will visit each State to install and test equipment, and ensure that the MDS system is fully operational. We currently plan to phase in State deployment of the system, roughly from August through December 1997.

We will place this system in each State and it will be operated by personnel within the designated State agency. We are requiring that the State systems do the following: receive MDS records from nursing homes; authenticate and validate the records received from nursing homes; provide feedback to the nursing homes by indicating acknowledgment of the transmission of the data and specifying the status of record validation; store the MDS records in a permanent data base within the State; create system management reports and logs; generate provider performance reports including quality indicator reports designed to support a future data-driven survey process and provider survey targeting functions; perform other analytical functions, as defined by us; create ad-hoc reports; and retransmit validated MDS records from each State agency to a national MDS data repository developed and maintained by us.

Just as in nursing homes, some States are already using some sort of an automated MDS collection tool. At least 12 States have already developed MDS data bases. In nearly all cases, the State Medicaid agency has been the driving force in getting MDS data to the State level. System designs and approaches have varied considerably (that is, while two States have recently moved to modem transmission, other States still perform data entry at the State level from hard copies forwarded by nursing homes).

We are providing the MDS system to States primarily for use in the Survey and Certification program. As such, most Federally reimbursable costs incurred by the States for automating the MDS will be funded through that program. However, we anticipate that many States will also choose to use MDS data in administering their Medicaid programs. When that is the case, Federal reimbursement is applicable to the extent a State uses the MDS for administering its Medicaid program. As a result, it may be appropriate for a State to allocate some MDS costs to its Medicaid administrative cost claims.

When a State does use MDS in administering its Medicaid programs, it should apportion Federal costs associated with automating the MDS and operating the data system between the Medicare and Medicaid Survey and Certification program, and the Medicaid program (as administrative costs, when applicable). The State should apportion MDS costs to these programs based on the State's determination of each program's utilization of the MDS system. Costs charged to the Medicare and Medicaid Survey and Certification program will be prorated in terms of the proportion of SNFs and NFs in the State that participate in the Medicare and Medicaid programs. Costs for SNFs and NFs are split equally between the two programs. The Federal financial participation rate for the Medicaid Survey and Certification Program is 75 percent. The Federal financial participation rate for costs apportioned as Medicaid administrative costs is 50 percent. When the State licensure program benefits from the automation of the MDS, the State should also share in the MDS automation costs.

Several States asked if we could reimburse Medicaid administrative costs associated with the development of MDS at Federal financial participation rates greater than 50 percent, the rate used in computing Medicaid reimbursement for general administration of the program. Specifically, they asked if we will reimburse these costs at the same rates used to reimburse the costs of designing, developing, implementing and operating a Medicaid Management Information Systems (MMIS).

Section 1903(a)(3) of the Act and implementing regulations at § 433.111 describe the MMIS as a mechanized claims processing and information retrieval system. Federal financial participation is available at 90 percent in expenditures for design, development, installation or enhancement of the system, while 75 percent is available for costs relating to its operations (namely, processing claims and producing related management information). The MDS is not a Medicaid claims processing and information retrieval system. We reimburse other systems not directly related to performing MMIS functions, such as the MDS, at the 50 percent level of Federal financial participation.

Commenters asked whether automated systems to collect and analyze data for rate setting purposes meet the MMIS definition. Because rate setting is outside the claims payment and information retrieval processes required by section 1903(a)(3) of the Act, those costs are not eligible for enhanced Medicaid reimbursement under the MMIS definition. However, in those instances when specific data elements from a separate system like MDS must be transferred to the MMIS in order to calculate individual provider payments, the cost of modifying and operating the MMIS to accept and use the data from the outside source qualifies for enhanced Federal financial participation if the State follows the regulations and guidance found in §§ 433.110 through 433.112, 433.116 and in Part 11 of the State Medicaid Manual.

For example, a major function of the MMIS is to produce both beneficiary and provider profiles for program management and utilization review purposes. NF resident and provider profiles are required by § 433.116(g). However, both NF resident and NF provider profiles historically have been very limited because the data elements on a nursing facility claim provide few details of services provided. A State may wish to improve the MMIS profiling capability by importing MDS data to prepare augmented profiles of nursing facility and nursing facility residents. If the State does that, the enhanced Federal financial participation will be available for the costs of modifying and operating the MMIS to accept and use the data from MDS if the State acts in accordance with the regulations in §§ 433.110 through 433.112, 433.116 and the guidance in Part 11 of the State Medicaid Manual. Please note that we currently encourage States to modify their MMIS to accept encounter documents from Medicaid managed care organizations to extend the MMIS profiling capability to cover both managed care and fee-for-service providers and patients. Therefore, it seems appropriate that we would reimburse the cost of modifying MMIS to accommodate MDS usage also at the enhanced MMIS rates, if the State meets the conditions in the aforementioned regulations and State Medicaid Manual.

The following is our estimate of State costs for automating the MDS:

- *Hardware:* We will hire a contractor to purchase, deliver, and install the MDS equipment in each State. Since we will be providing the equipment to the States, the States will not incur any cost for hardware. This equipment will include both a communications server and a data base server. The number of nursing homes within each State will be the driving factor in determining each State's computer needs. We will scale

system requirements to meet the data storage and transmission needs of the individual State.

- *Software:* Since we are developing the software for each State's MDS system, we will pay the costs associated with this system and supply the system directly to the States. Software that we will supply to the States will include communications software and data base software, as well as customized analytical software to generate reports. When a State develops its own customized MDS applications, the costs of developing and maintaining these additional software applications (and any related hardware components) will not be Federally funded.
- *Operational Staff Time:* States may plan to reassign existing staff or hire additional full-time equivalents to manage the automation project and perform day-to-day operation of the standardized MDS system. The staff members assigned to MDS automation tasks will need to have skills in a variety of areas: technical computer, network, and telecommunication skills; data processing operations; and, user support and training (including support for both State and facility users). In hiring or reassigning staff, we encourage States to recruit generalists who can perform a wide range of the above tasks.

Each State's actual staffing requirements will vary depending on the State's size (that is, as measured by the number of nursing homes regulated). To assist in determining staffing requirements within particular States, we assigned States to one of three categories based on the number of certified nursing homes in their jurisdiction: less than 144, 144 to 356, and those greater than 356 facilities. We estimate that 1.5 full-time equivalents will be required to manage all MDS-related operations for each of the three categories; for instance, States in the smallest group should budget for 1.5 full-time equivalents, 3 full-time equivalents in the second group, and 4.5 full-time equivalents in the largest group. This includes an MDS Automation Project Coordinator.

Specifically, an average sized State regulating about 300 nursing homes will require about three full-time equivalents to fulfill the following MDS-related tasks: MDS project coordination (oversight of daily operations); technical operations (systems management, configuration and troubleshooting); training and support operations (facility and MDS software vendor startup training); and operations (functions associated with transmission logging and error tracking and resolution). We estimate that MDS-related staffing costs for an average size State will be about $133,000 per year.

- *Supplies and Maintenance of Equipment:* States can expect about $600 per year in additional costs for products that are consumed, such as printer toner and paper. The MDS data management and analysis equipment to be installed within each State is comprised of standard ''off-the-shelf'' hardware and software components that are generally covered under typical service agreements that the States may already have in place. We will ask States to extend these agreements to cover hardware components delivered as part of the MDS project. These costs will again vary according to the size of the State requirements, but on average, the typical State will incur about $750 per year in additional cost for systems maintenance. We will maintain and upgrade centrally the standardized MDS software components that we develop and distribute to States.
- *Training:* We plan to centralize training of State personnel who will be responsible for administrative and technical aspects of system operations. Additionally, we will provide separate training on the technical aspects of the system including its communications, networking, data base and software application functions, daily operations and on-going systems management.

In order to promote national consistency in MDS system operations and troubleshooting, we request that each State designate one individual as the MDS Automation Project Coordinator. This person will be our key contact within each State for managing MDS system issues. We are planning to convene at least one national meeting of the MDS Automation Project Coordinators each year. We will use this forum to present new information, gather suggestions for system improvements, exchange ideas on MDS system operations, administration and troubleshooting issues, and to discuss objectives for future system development and refinement.

With our technical support and guidance, States will work closely with the provider community in providing information on specific requirements related to the submission of MDS assessments to a repository maintained by the State. The standardization of the State MDS system extends back to the provider communications function, in that nursing homes will use a common data communications software package to transmit MDS assessments to the State. State personnel will work with the nursing homes and software vendors in educating them about this process. We expect that the commitment of staff resources to this task will be most intensive during the first 6 months of this process. However, States should also expect some ongoing allocation of full-time equivalents to support this process on an ongoing basis.

We anticipate annual travel costs associated with training for an average size State to be about $2,700 per year.

- *Data Transmission:* States will incur data communication costs for transmission of MDS assessments from nursing homes. These costs have two basic elements:

(1) Fixed monthly line fees of approximately $32.50 per line per month. The number of lines required varies from 4 to 16 according to the number of nursing homes supported by a State. On average, a State's fixed line cost will be $3,806 per year.

(2) Line connect and long distance charges of approximately $.27 per minute. We estimate that the typical nursing home will require, on average, 5 minutes ($1.35) of connection time per month for MDS submissions. This translates into an average connection cost of $5,376 per year per State.

We will fund the cost of the States transmitting their MDS data to our central repository. Therefore, we do not expect that States will incur data transmission costs to us.

*D. Conclusion*

While we acknowledge that nursing homes and States will bear some incremental costs associated with this proposal, these costs are well justified when considered within the context of the anticipated increased quality of care for nursing home residents, as well as the potential uses of the automated data by the facilities, States, and us. The foregoing estimates may actually overstate anticipated costs because they do not take into account cost-savings achieved by improving nursing homes' management information systems, as well as potential improvements in resident's overall health status. Nor do they represent the savings inherent in a more focused, uniform approach by both the States and us in assessing quality of care in the nation's nursing homes.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation

was reviewed by the Office of Management and Budget.

**V. Information Collection Requirements**

Sections 4204(b) and 4214(d) of OBRA '87 provide a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments. Therefore, the information collection requirements referenced in this rule are exempt from the Paperwork Reduction Act of 1995.

**List of Subjects in 42 CFR Part 483**

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR chapter IV is amended as follows:

## PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.20, paragraphs (d) through (f) are redesignated as (k) through (m), respectively, paragraphs (b) and (c) are revised and new paragraphs (d) through (j) are added to read as follows:

**§ 483.20 Resident assessment.**

* * * * *

(b) *Comprehensive assessments.*

(1) *Resident assessment instrument.* A facility must make a comprehensive assessment of a resident's needs, using the resident assessment instrument (RAI) specified by the State. The assessment must include at least the following:

(i) Identification and demographic information.

(ii) Customary routine.

(iii) Cognitive patterns.

(iv) Communication.

(v) Vision.

(vi) Mood and behavior patterns.

(vii) Psychosocial well-being.

(viii) Physical functioning and structural problems.

(ix) Continence.

(x) Disease diagnoses and health conditions.

(xi) Dental and nutritional status.

(xii) Skin condition.

(xiii) Activity pursuit.

(xiv) Medications.

(xv) Special treatments and procedures.

(xvi) Discharge potential.

(xvii) Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.

(xviii) Documentation of participation in assessment.

The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

(2) *When required.* A facility must conduct a comprehensive assessment of a resident as follows:

(i) Within 14 calendar days after admission, excluding readmissions in which there is no significant change in the resident's physical or mental condition. (For purposes of this section, ''readmission'' means a return to the facility following a temporary absence for hospitalization or for therapeutic leave.)

(ii) Within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. (For purposes of this section, a ''significant change'' means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both.)

(iii) Not less often than once every 12 months.

(c) *Quarterly review assessment.* A facility must assess a resident using the quarterly review instrument specified by the State and approved by HCFA not less frequently than once every 3 months.

(d) *Use.* A facility must maintain all resident assessments completed within the previous 15 months in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care.

(e) *Coordination.* A facility must coordinate assessments with the preadmission screening and resident review program under Medicaid in part 483, subpart C to the maximum extent practicable to avoid duplicative testing and effort.

(f) *Automated data processing requirement.* (1) *Encoding data.* Within 7 days after a facility completes a resident's assessment, a facility must encode the following information for each resident in the facility:

(i) Admission assessment.

(ii) Annual assessment updates.

(iii) Significant change in status assessments.

(iv) Quarterly review assessments.

(v) A subset of items upon a resident's transfer, reentry, discharge, and death.

(vi) Background (face-sheet) information, if there is no admission assessment.

(2) *Transmitting data.* Within 7 days after a facility completes a resident's assessment, a facility must be capable of transmitting to the State information for each resident contained in the MDS in a format that conforms to standard record layouts and data dictionaries, and that passes standardized edits defined by HCFA and the State.

(3) *Monthly transmittal requirements.* A facility must electronically transmit, at least monthly, encoded, accurate, complete MDS data to the State for all assessments conducted during the previous month, including the following:

(i) Admission assessment.

(ii) Annual assessment.

(iii) Significant change in status assessment.

(iv) Significant correction of prior full assessment.

(v) Significant correction of prior quarterly assessment.

(vi) Quarterly review.

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(viii) Background (face-sheet) information, for an initial transmission of MDS data on a resident that does not have an admission assessment.

(4) *Data format.* The facility must transmit data in the format specified by HCFA or, for a State which has an alternate RAI approved by HCFA, in the format specified by the State and approved by HCFA.

(5) *Resident-identifiable information.* (i) A facility may not release information that is resident-identifiable to the public.

(ii) The facility may release information that is resident-identifiable to an agent only in accordance with a contract under which the agent agrees not to use or disclose the information except to the extent the facility itself is permitted to do so.

(g) *Accuracy of assessments.* The assessment must accurately reflect the resident's status.

(h) *Coordination.* A registered nurse must conduct or coordinate each assessment with the appropriate participation of health professionals.

(i) *Certification.* (1) A registered nurse must sign and certify that the assessment is completed.

(2) Each individual who completes a portion of the assessment must sign and

certify the accuracy of that portion of the assessment.

(j) *Penalty for falsification.* (1) Under Medicare and Medicaid, an individual who willfully and knowingly—

(i) Certifies a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 for each assessment; or

(ii) Causes another individual to certify a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 for each assessment.

(2) Clinical disagreement does not constitute a material and false statement.

* * * * *

3. Subpart F consisting of § 483.315 is added to read as follows:

## Subpart F—Requirements That Must be Met by States and State Agencies, Resident Assessment

### § 483.315 Specification of resident assessment instrument.

(a) *Statutory basis.* Sections 1819(e)(5) and 1919(e)(5) of the Act require that a State specify the resident assessment instrument (RAI) to be used by long term care facilities in the State when conducting initial and periodic assessments of each resident's functional capacity, in accordance with § 483.20.

(b) *State options in specifying an RAI.* The RAI that the State specifies must be one of the following:

(1) The instrument designated by HCFA.

(2) An alternate instrument specified by the State and approved by HCFA, using the criteria specified in the State Operations Manual issued by HCFA (HCFA Pub. 7) which is available for purchase through the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151.

(c) *State requirements in specifying an RAI.*

(1) Within 30 days after HCFA notifies the State of the HCFA-designated RAI or changes to it, the State must do one of the following:

(i) Specify the HCFA-designated RAI.

(ii) Notify HCFA of its intent to specify an alternate instrument.

(2) Within 60 days after receiving HCFA approval of an alternate RAI, the State must specify the RAI for use by all long term care facilities participating in the Medicare and Medicaid programs.

(3) After specifying an instrument, the State must provide periodic educational programs for facility staff to assist with implementation of the RAI.

(4) A State must audit implementation of the RAI through the survey process.

(5) A State must obtain approval from HCFA before making any modifications to its RAI.

(6) A State must adopt revisions to the RAI that are specified by HCFA.

(d) *HCFA-designated RAI.* The HCFA-designated RAI is published in the State Operations Manual issued by HCFA (HCFA Pub. 7), as updated periodically, and consists of the following:

(1) The minimum data set (MDS) and common definitions.

(2) The resident assessment protocols (RAPs) and triggers that are necessary to accurately assess residents, established by HCFA.

(3) The quarterly review, based on a subset of the MDS specified by HCFA.

(4) The requirements for use of the RAI that appear at § 483.20.

(e) *Minimum data set (MDS).* The MDS includes assessment in the following areas:

(1) Identification and demographic information, which includes information to identify the resident and facility, the resident's residential history, education, the reason for the assessment, guardianship status and information regarding advance directives, and information regarding mental health history.

(2) Customary routine, which includes the resident's lifestyle prior to admission to the facility.

(3) Cognitive patterns, which include memory, decision making, consciousness, behavioral measures of delirium, and stability of condition.

(4) Communication, which includes scales for measuring hearing and communication skills, information on how the resident expresses himself or herself, and stability of communicative ability.

(5) Vision pattern, which includes a scale for measuring vision and vision problems.

(6) Mood and behavior patterns, which include scales for measuring behavioral indicators and symptoms, and stability of condition.

(7) Psychosocial well-being, which includes the resident's interpersonal relationships and adjustment factors.

(8) Physical functioning and structural problems, which contains scales for measuring activities of daily living, mobility, potential for improvement, and stability of functioning.

(9) Continence, which includes assessment scales for bowel and bladder incontinence, continence patterns, interventions, and stability of continence status.

(10) Disease diagnoses and health conditions, which includes active medical diagnoses, physical problems, pain assessment, and stability of condition.

(11) Dental and nutritional status, which includes information on height and weight, nutritional problems and accommodations, oral care and problems, and measure of nutritional intake.

(12) Skin condition, which includes current and historical assessment of skin problems, treatments, and information regarding foot care.

(13) Activity pursuit, which gathers information on the resident's activity preferences and the amount of time spent participating in activities.

(14) Medications, which contains information on the types and numbers of medications the resident receives.

(15) Special treatments and procedures, which includes measurements of therapies, assessment of rehabilitation/restorative care, special programs and interventions, and information on hospital visits and physician involvement.

(16) Discharge potential, which assesses the possibility of discharging the resident and discharge status.

(17) Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.

(18) Documentation of participation in assessment.

(f) *Resident assessment protocols (RAPs).* At a minimum, the RAPs address the following domains:

(1) Delirium.
(2) Cognitive loss.
(3) Visual function.
(4) Communication.
(5) ADL functional/rehabilitation potential.
(6) Urinary incontinence and indwelling catheter.
(7) Psychosocial well-being.
(8) Mood state.
(9) Behavioral symptoms.
(10) Activities.
(11) Falls.
(12) Nutritional status.
(13) Feeding tubes.
(14) Dehydration/fluid maintenance.
(15) Dental care.
(16) Pressure ulcers.
(17) Psychotropic drug use.
(18) Physical restraints.

(g) *Criteria for HCFA approval of alternate instrument.* To receive HCFA approval, a State's alternate instrument must use the standardized format, organization, item labels and definitions, and instructions specified by HCFA in the latest issuance of the State Operations Manual issued by HCFA (HCFA Pub. 7).

(h) *State MDS collection and data base requirements.* (1) As part of facility

survey responsibilities, the State must establish and maintain an MDS Database, and must do the following:

(i) Use a system to collect, store, and analyze data that is developed or approved by HCFA.

(ii) Obtain HCFA approval before modifying any parts of the HCFA standard system other than those listed in paragraph (h)(2) of this section (which may not be modified).

(iii) Specify to a facility the method of transmission of data to the State, and instruct the facility on this method.

(iv) Upon receipt of data from a facility, edit the data, as specified by HCFA, and ensure that a facility resolves errors.

(v) At least monthly, transmit to HCFA all edited MDS records received during that period, according to formats specified by HCFA, and correct and retransmit rejected data as needed.

(vi) Analyze data and generate reports, as specified by HCFA.

(2) The State may not modify any aspect of the standard system that pertains to the following:

(i) Standard approvable RAI criteria specified in the State Operations Manual issued by HCFA (HCFA Pub. 7) (MDS item labels and definitions, RAPs and utilization guidelines).

(ii) Standardized record formats and validation edits specified in the State Operations Manual issued by HCFA (HCFA Pub. 7).

(iii) Standard facility encoding and transmission methods specified in the State Operations Manual issued by HCFA (HCFA Pub. 7).

(i) *State identification of agency that collects RAI data.* The State must identify the component agency that collects RAI data, and ensure that this agency restricts access to the data except for the following:

(1) Reports that contain no resident-identifiable data.

(2) Transmission of data and reports to HCFA.

(3) Transmission of data and reports to the State agency that conducts surveys to ensure compliance with Medicare and Medicaid participation requirements, for purposes related to this function.

(4) Transmission of data and reports to the State Medicaid agency for purposes directly related to the administration of the State Medicaid plan.

(5) Transmission of data and reports to other entities only when authorized as a routine use by HCFA.

(j) *Resident-identifiable data.* (1) The State may not release information that is resident-identifiable to the public.

(2) The State may not release RAI data that is resident-identifiable except in accordance with a written agreement under which the recipient agrees to be bound by the restrictions described in paragraph (i) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and No. 93.773, Medicare—Hospital Insurance)

Dated: December 3, 1997.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: December 9, 1997.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 97–32828 Filed 12–22–97; 8:45 am]

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# Part IV

# Department of Agriculture

**Rural Housing Service**
**Rural Business-Cooperative Service**
**Rural Utilities Service**
**Farm Services Agency**

**7 CFR Part 1944**

**Rural Rental Housing (RRH) Assistance; Final Rule**

**Notice of Availability of Funds; Multi-Family Housing, Single Family Housing and Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program**

**DEPARTMENT OF AGRICULTURE**

**Rural Housing Service**

**Rural Business-Cooperative Service**

**Rural Utilities Service**

**Farm Service Agency**

**7 CFR Part 1944**

**RIN 0575–AC15**

## Rural Rental Housing (RRH) Assistance

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Rural Rental Housing (RRH) program. This action is taken to implement legislative reforms mandated by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. 104–180, enacted August 6, 1996, and to implement Pub. L. 105–86, enacted November 18, 1997, which amends the maximum loan term for Section 515 loans from 50 years to 30 years. The intended effect of these reforms is to improve the effectiveness and efficiency of the Section 515 RRH program.

**DATES:** The effective date of this final rule is January 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** Linda Armour or Carl Wagner, Senior Loan Specialists, Multi-Family Housing Processing Division, RHS, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Ave., S.W., Washington, D.C. 20250–0781, telephone (202) 720–1608.

**SUPPLEMENTARY INFORMATION:**

### Classification

This rule has been determined to be not significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

### Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0047, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulation. This rule does not impose any new information collection requirements from those approved by OMB.

### Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform.

In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

### Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

### Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

### Background

On August 6, 1996, Congress enacted the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. 104–180 (herein referred to as the Act). The Act included six reforms to the multifamily housing (MFH) program, which the Agency was directed to implement without delay. Four of the six reforms were directive and could be implemented as enacted without the need for public comment. However, public comment was needed for the other two reforms, which provided for substantive changes in the manner in which MFH loan requests are processed and gave the Secretary administrative discretion in their implementation. Because of the mandate to implement the reforms immediately, the rule was published as an interim final rule on May 7, 1997 (62 FR 25062), effective upon publication. The rule included a 60-day comment period, which ended on July 7, 1997.

### Discussion of Comments

A total of seventeen written comments were received from developers, nonprofit groups, Rural Development staff, members of Congress, and state housing agencies. The Agency appreciates the time and effort that went into these comments, many of which offered detailed and constructive suggestions.

Several commentors expressed their support for the four directive reforms,

which have been adopted without change in this final rulemaking document:

*(1) Assurance That Project Transfers Are in the Best Interest of the Tenants and the Government*

Two commentors indicated support for the provisions pertaining to project transfers. One stressed the importance of maintaining the Agency's inventory in good condition to avoid health and safety problems.

*(2) Elimination of the Occupancy Surcharge*

Two commentors indicated their support of this legislative change. One suggested that the monies collected prior to the elimination of the surcharge be used for other program opportunities such as funding the Section 538 program or for servicing rental assistance (RA), if not returned to the properties. The Agency will consider these recommendations on this issue.

*(3) Changes to the Equity Loan Program*

Two comments were received on the equity loan program. One indicated support for the legislative changes and noted that the Agency has not yet established an office of rental housing preservation which would make decisions relative to prepayment and incentives, as authorized by section 537 of the Housing Act of 1949. The second commentor expressed the opinion that the preservation of low income housing stock could not be accomplished without significant financial incentives for borrowers and predicted that new approaches to the prepayment issue would be forthcoming from the courts or Congress in the near future.

*(4) Implementation of Penalties for Equity Skimming by Project Owners and Managers*

Two commentors indicated their support for this legislation. One urged the Agency to act quickly in pursuing parties who abuse the program to the detriment of residents and other borrowers.

The majority of the comments on the interim final rule addressed the two reforms that included administrative discretion in their implementation: (1) Prioritization of assistance and (2) assurances that the amount of assistance provided is no more than necessary. Based on comments received, several minor changes have been made in the final rule.

*(1) Prioritization of Assistance*

Sections 1944.228, ''Ranking of rural places based on greatest need for Section 515 housing,'' and 1944.229, ''Establishing the list of designated places for which Section 515 applications will be invited,'' were added to 7 CFR part 1944 to implement the statutory requirements pertaining to prioritization of Section 515 assistance. The statute directs the Secretary to identify and designate rural areas with the greatest need for Section 515 housing, taking into consideration the incidence of poverty, the lack of affordable housing and existence of substandard housing, the lack of mortgage credit, the rural characteristics of the location, and other factors determined by the Secretary that demonstrate the need for affordable housing.

Section 1944.228 of the interim rule provides that places will be ranked as follows: Places must qualify as rural areas in accordance with 7 CFR 3550.10, lack mortgage credit for borrowers in accordance with § 1944.211(a)(2), and demonstrate a need for multifamily housing based on the following factors, with equal weight given to each: the incidence of poverty, measured by determining households below 60 percent of the county rural median income; the incidence of substandard housing, measured by determining the number of occupied housing units lacking complete plumbing or having more than one occupant per room; and the lack of affordable housing, measured by determining households below 60 percent of rural median income who are paying more than 30 percent of income in rent.

Twelve commentors addressed the provisions of § 1944.228 and offered thoughtful suggestions for modifying the ranking system. Specific areas addressed were:

Ranking Factors

Several commentors felt the ranking factors should be expanded. One commentor suggested using additional factors such as the availability of existing subsidized housing, the number of vacancies in existing subsidized housing, demand, the availability of services, the anticipated growth of the area, and the availability of adequate utilities. We agree that these factors need to be considered and, in fact, they are taken into consideration, either in the selection of ranked places for the designated place list or in the market feasibility determination. For example, after places have been ranked using the Census data, the list is reviewed to determine if any of the ''build and fill'' conditions exist, one of which is a high vacancy rate in existing RHS or similar assisted rental units. Places with any ''build and fill'' condition may not be included on the designated place list; they are deferred until the condition no longer exists. The other recommended factors (demand, anticipated growth, availability of housing, services, and utilities) are part of the market feasibility determination. The Agency believes this is the most effective way to take these factors into consideration. It would not be feasible to obtain and maintain current market data on all rural communities for inclusion in the initial ranking process.

Weights of the Ranking Factors

Three commentors felt the formula provided an advantage to larger rural communities and two of these expressed the opinion that the Agency should consider percentages instead of raw numbers to give smaller rural communities a better opportunity to compete. In fact, the formula used by the Agency, which was not published in the **Federal Register**, considered both raw numbers and percentages. A ranking score was assigned to each place for the three factors (income, rent overburden, and substandard housing) based on the percentage of its total households and on the actual number of households or substandard units. Each score for these six rankings was totaled to reach a final ranking score. This method targets communities that demonstrate a high potential need for housing assistance both by raw numbers and high percentages of their total households. This has resulted in a good mix of small to mid-size rural communities, and we plan to continue with this methodology.

One commentor suggested giving less weight to substandard housing; another suggested giving more weight to rent overburden. We considered these suggestions and ran data for several States with the adjusted factors. The results were inconclusive and we feel that, in the absence of supporting data or documentation, it would be premature to make changes in the formula. We intend to leave the weights unchanged for the remainder of the 3-year designated place cycle but will continue to evaluate the benefits of modifying the formula for future cycles.

Use of 60 Percent of County Rural Median Income

Two commentors disagreed with the Agency's use of 60 percent of county rural median income to determine households in poverty. One commentor suggested using 80 percent; the other felt strongly that 30 percent more closely represented households in poverty, and thus areas of greatest need,

as required by the statute. The Agency has compared the various percentages of county rural median income in several states to the National poverty figure. Based on our review, we agree that 30 percent more closely approximates the National poverty figure. As a result, ranking will be based on households at or below 30 percent of county rural median income. The ranking data has been calculated for all States based on this figure and will be used to select any additional designated places. Places that are currently on the designated place list will remain on the list for the remainder of their 3-year designation period, or until removed or deferred in accordance with § 1944.229(d). The revised ranking data and list of designated places are discussed further in the ''Implementation Proposal''.

Adding Counties to the Ranking List

Two commentors suggested the Agency rank counties as well as communities. This is an issue that was considered at length in the development of the interim final rule. Because the statute mandates the Secretary to identify and target areas of greatest need, we felt that a county-wide designation was too broad, since the needs of the communities within a county can vary widely. If an entire county were designated, an applicant might well choose areas that have higher incomes and less substandard housing, even though the true need for housing may be greater in another community. We believe it is necessary to identify and designate specific communities to ensure that funds are directed to areas of greatest need and, therefore, we have not revised this provision.

Flexibility in the Ranking Factors

Eight commentors felt the ranking factors should allow more flexibility for state and local conditions. This is another issue that was discussed at length in the development of the interim final rule. We recognize that conditions and goals vary from state to state; however, we believe it is critical to maintain National standards for program consistency. In addition, it would be difficult for States to obtain objective data that could be added to the ranking formula. Instead of providing flexibility in the ranking factors, we provided flexibility in the selection of designated places. This was accomplished in the regulation by allowing States to select places from further down the ranking list, but still within the top ranked, that have been identified as high need areas in the state Consolidated Plan or state needs assessment. To provide further flexibility, we have included provisions in the final rule for States with an active state leveraging program. Details are given below under the heading ''Designated places for States with an active state leveraging program''.

As published in the interim final rule, § 1944.229, ''Establishing the list of designated places for which Section 515 applications will be invited'', provides that the number of designated places may equal up to 5 percent of the State's total eligible rural places but must equal, in all cases, at least 10 places. To be included on the list of designated places, a place must have 250 or more households as a minimum feasibility threshold for multifamily housing and may not have any of the ''build and fill'' conditions specified in § 1944.213(f)(2). Places that meet the minimum size threshold and do not have any ''build and fill'' conditions are then selected in rank order to form the list of designated places. This section provides the flexibility for States, with National Office concurrence, to select up to 10 percent of their designated places to provide geographic diversity or to reach high need areas, provided such places are within the top-ranked 10 percent of the state's total rural places.

Nine commentors addressed the provisions of § 1944.229 in the following areas:

Establishing the Number of Designated Places

Five commentors felt that the limit of 5 percent of the state's total eligible rural places was too restrictive and did not provide sufficient diversity. Recommended percentages ranged from 10 to 20 percent. One commentor recommended a percentage of places equal to 25 percent of the state's total rural households. An analysis of several states showed that the latter suggestion was equivalent to approximately 10 percent of the states' total rural places. We reviewed the ranking data for several States and found that there was little difference in the ranking scores between places that rank in the top 5 percent compared to those within the top 10 to 20 percent, simply because of the volume of places being ranked. Therefore, a small increase in the percentage of designated places will still target the neediest communities. Accordingly, the 5 percent limit has been modified in the final rule to allow States to designate up to 10 percent of their total eligible rural places. In addition, based on comments that expressed concern that Indian reservations, colonias, Empowerment Zone and Enterprise Communities (EZ/ECs), and Rural Economic Area Partnership (REAP) communities were frequently not included on the list of designated places, the final rule provides that States may designate these special high-need areas in addition to their 10 percent or minimum 10 places.

Build and Fill Conditions

Three commentors mentioned their support for ''build and fill'', which is widely understood to mean that no additional Section 515 housing will be approved if other Section 515 or similar assisted units have been approved, are under construction, or not yet filled. However, the ''build and fill'' provisions include other conditions which indicate that the market does not currently need additional rental housing: existing Section 515 or similar assisted housing units are experiencing high vacancies; a request for a Servicing Market Rate Rent (SMR) is pending or in effect and still needed; or the need in the market area is for additional rental subsidies and not for additional housing units. Places with any of these conditions may not be included on the designated place list. States are responsible for reviewing their ranking list, consulting with HUD and other housing agencies, and deferring places with ''build and fill'' conditions. In response to the comments we received recommending that the Agency consider these or similar market factors in the ranking data, we believe the provision which defers places with ''build and fill'' conditions accomplishes just that. One commentor noted that places were listed on the designated place list with high vacancies in assisted housing complexes. Any such instances should be brought to the attention of the RHS State office staff for their review. The Agency will continue to stress the importance of reviewing the designated place list annually for ''build and fill'' conditions. Another commentor recommended including low income housing tax credit (LIHTC) units in the definition of assisted housing complexes for purposes of ''build and fill''. We agree and have added a specific reference to LIHTC units in the ''build and fill'' provisions in § 1944.213(f)(2).

Minimum Number of Households for Designated Places

Four commentors objected to the requirement that designated places have a minimum of 250 households and noted that market demand should be the determining factor, not an arbitrary size requirement. We agree that market demand should determine project feasibility; however, we feel that places

with fewer than 250 households rarely have sufficient demand or the support services necessary for multifamily complexes. We believe it is prudent to maintain a National feasibility standard and, therefore, have retained this provision. We have also retained the ability for States that have been successful in developing and operating multifamily units in very small communities to request an exception from the National Office to establish a lower state-wide feasibility threshold. In addition, based on concerns that Indian reservations are sometimes excluded because households are frequently split between two or more communities within the same reservation, we have modified this provision to specify that, for Indian reservations, there must be 250 or more households on the reservation.

Designated Places for States With an Active State Leveraging Program

Eight comments were received from Rural Development State staff, state housing agencies, members of Congress, and applicants, urging the Agency to provide more flexibility for States with an active state leveraging program. It was noted that, in many cases, the areas targeted by the state agencies did not correspond to the RHS designated places. As a result, funds that had been set aside by state agencies for leveraging with RHS funds were not able to be fully used. The Agency is committed to partnering with other providers of resources; however, at the same time, we have a legislative mandate to designate rural areas of greatest need and to direct RHS funds to those areas. To accomplish both priorities, we have added provisions in the final rule to allow States with a formal state leveraging program and agreement with their state agency to develop a partnership designated place list with the state agency, which must be approved by the National Office. Places selected for the list must be high-need areas based on criteria consistent with the Agency's statutory requirements as well as the state's authorizing requirements. All loan requests (including those for places on the partnership designated place list) will be scored together as one group. In order of point score or, where there are point score ties, in order of point score and number assigned in accordance with § 1944.231(b)(3), two ranking lists will be formed: the RHS ranking list will include loan requests for places on the RHS place list, and the partnership ranking list will include loan requests for places on the partnership place list. Selection for further processing will be as follows: Loan requests must first be selected from the RHS ranking list that, based on total development cost (TDC), are proportionate to the State's RHS allocation. Loan requests will then be selected in order of highest point score (or point score and tie-breaker number), regardless of whether the loan requests are on the RHS ranking list or the partnership ranking list. For example, a State with a Section 515 allocation of $2 million has three loan requests on the RHS ranking list with point scores of 20, 9, and 5 respectively; and two loan requests on the partnership ranking list with point scores of 18 and 15. The first loan request that will be processed is the highest ranked proposal on the RHS list, with a point score of 20. This request has a TDC of $1.2 million, of which the RHS loan request is $500,000. The next request that will be processed is the second ranked proposal on the RHS list, with a point score of 9. This loan request has a TDC of $1 million, of which the RHS loan request is $750,000. The total amount of RHS funds requested for these two proposals ($1,250,000) is less than the RHS allocation of $2 million; however, the total TDC for the two requests equals $2.2 million, which exceeds the State's allocation. This satisfies the provision that loans must be funded in places on the RHS designated place list proportionate to the RHS allocation. Having satisfied this provision, the next loan requests will be selected in order of highest point score, regardless of whether they are on the RHS list or the partnership list. In this example, assuming there are sufficient funds remaining, the next loan request to be processed would be the 18-point request on the partnership list, followed by the 15-point request on the partnership list, and then by the 5-point request on the RHS list.

Section 1944.230 was added in the interim final rule to establish provisions on loan application submission deadlines and the availability of funds. This section specifies that the Agency will publish annually in the **Federal Register** a Notice of Funds Availability (NOFA), any limits on the amount of individual loan requests, the dates for the funding cycles, and the deadline for submission of loan applications.

Five commentors addressed this section. Two commentors expressed their support for the NOFA system; one commentor was opposed; the other two offered suggestions but did not indicate strong feelings one way or the other. One of the supporters felt the NOFA system was a very cost effective way for developers to participate in the program without having development money tied up for several years waiting for funds to become available. We agree, and would like to add that the decision to move to a NOFA system was reached with extensive input from the Section 515 stakeholders who participated in the development of the reform regulations.

The commentor who opposed the NOFA system felt that it: (1) Encouraged applicants to expend funds for proposals that might not materialize; (2) eliminated nonprofit applicants because they lack the time and money to put together an application; and (3) nearly eliminated leveraging because of the problems coordinating with partners. On the first issue, we believe the NOFA system will be more cost effective, not less, since applicants do not have to incur costs over a period of time waiting for funds to become available. The submission requirements for applicants are the same under the NOFA system as under the previous regulations, so the cost of submitting a loan request has not changed; the difference is that, under the previous system, applicants were required to maintain the site option and update the market and financial information annually and still were not guaranteed of funding because of the backlog of requests and limited availability of funds. Under the NOFA system, applicants know within a short timeframe whether their loan request has been selected. No further costs are incurred unless or until the applicant reapplies in the next funding cycle. As a point of interest, the Agency is reviewing the Section 515 submission requirements to determine if the initial cost to applicants can be reduced, for example, by modifying the initial market analysis requirements. These changes are being considered as part of the Agency's ''reinvention'' regulation, which is scheduled to be published for comment early in 1998. On the second issue, we do not believe the NOFA system precludes nonprofits from applying. In fiscal year 1997, the period of time for submitting applications was shortened because of the time involved in writing and publishing the regulations. However, in future years, the Agency will publish NOFA as early as possible in the fiscal year and provide a longer application period. In addition, places are designated for 3 years, so applicants can continue to develop applications prior to publication of NOFA. On the third issue of coordinating NOFA with other funding cycles, we believe this issue will also be alleviated by the publication of NOFA early in the fiscal year. The earlier publication of NOFA

will enable States to coordinate the RHS funding cycle with the state agency's funding cycle. Three other commentors on this section also mentioned the importance of coordinating with other funding cycles and publishing the NOFA as early as possible.

One commentor suggested adding a provision that a project must have full funding committed by the end of the fiscal year and must start construction within a specified number of days (270 was suggested) or lose its obligation. We agree that it is necessary to establish and enforce processing deadlines or timeframes and we are addressing this issue in the reinvention of the multifamily regulations.

Section 1944.231, processing loan requests, was revised in the interim final rule to incorporate processing procedures for the NOFA system and to add provisions for scoring and ranking loan requests under the new system. Six commentors addressed this section in the following areas:

Application Requirements

Two commentors discussed the application process and requirements. One suggested that the Agency develop a uniform application package and checklist to ensure that all applications are received in the same format and judged by compliance to that format. We think this is an excellent idea and are developing a checklist and administrative guidance on determining a complete application that will be provided to States concurrently with the publication of this rule. The other commentor objected to the elimination of the term ''preapplication'', believing this served no useful purpose and was changed merely for the sake of change. We adopted the term ''initial loan request'' (or ''initial application'') because we believe it to be more appropriate for the NOFA process, which is a one-step annual selection process instead of the two-step process previously used, in which preapplications were kept on hand until funds became available. We also feel the terms are more consistent with those used by other lenders.

Scoring Loan Requests

The interim regulation provides that loan requests will be scored based on five factors:

(1) The presence and extent of leveraged assistance (including services, abatement of taxes, etc.) for the units that will serve RHS income-eligible tenants, not including tax credits or donated land. (0 to 20 points)

Five commentors addressed this loan scoring factor. One commentor felt the Agency needed to quantify amounts for services and tax abatements; another felt the 0–20 point range was too subjective. The same commentor recommended that the Agency reexamine its decision to give points for leveraged assistance because the benefits of the leveraged funds might be offset by an increase in demand for rental assistance. Another commentor felt that leveraging should not dominate the scoring and suggested that the Agency consider several additional factors, which are discussed below in ''Other scoring factors''. One commentor said it was unclear whether tax credit funds were eligible to receive points for leveraging, and three commentors recommended that tax credit funds that are dedicated back to the project's development or operation or to tenant subsidies be eligible to receive points.

In response to the comment that the range of 0 to 20 points is too subjective, the Agency provided separate administrative guidance to RHS staff at the time the regulation was published to ensure that all loan requests were scored consistently. We also provided guidance on establishing a value for services and tax abatements. On the issue of whether tax credit funds may be considered leveraged assistance for purposes of awarding points, we agree that any funds the applicant contributes to the proposal in excess of his or her required contribution, including tax credit proceeds, should be eligible for consideration for points as long as there is an equal or positive impact on basic rents. We have modified this provision accordingly in the final rule. Regarding the demand for rental assistance (RA), we do not foresee a major impact on RA usage, especially with the increased interest in developing mixed-income complexes that require only partial RA.

(2) The loan request is for units to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the state Consolidated Plan or state needs assessment as a high need community for multifamily housing. (20 points)

No comments were received on this loan selection factor; however, the Agency inadvertently omitted REAP (Rural Economic Area Partnership) communities in the list of high need areas in the interim final rule. This omission has been corrected in the final rule.

(3) The loan request is in support of a National Office initiative announced in NOFA. (20 points)

One commentor addressed this factor, expressing a concern that, without specific parameters, the factor could be used for politically motivated initiatives.

This factor was developed to ensure there is flexibility in the regulation for initiatives that are consistent with the statute that would enable the Secretary to direct funds to specific areas or for specific purposes in the event of unforeseen circumstances or events. We feel it is important to maintain this flexibility and, in the absence of other opposing comments, we have retained this provision.

(4) The loan request is in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with state-administered housing programs such as HOME funds or low income housing tax credits (LIHTC). A factor thus developed cannot duplicate factors already included in this paragraph and must be provided to the National Office prior to the funding cycle for concurrence and inclusion in the NOFA. (20 points)

One comment was received on this provision. The commentor felt that the factor needed further description and expressed a concern that it could be used to give preference to LIHTC loan requests, effectively excluding other loan requests.

This provision was included to give Rural Development State Directors more flexibility in working with their states to accomplish common housing goals, which we believe is critical to the Agency's partnership efforts. Factors developed under this provision require National Office concurrence, and we have retained this provision in the final rule.

(5) The loan request includes donated land meeting the provisions of § 1944.215(r)(4). (5 points)

One commentor felt that the Agency needed to redefine its provisions pertaining to preference for donated land in § 1944.215(r)(4), stating that the 1-year ownership requirement was too restrictive. The same commentor expressed the opinion that the value of land provided at no cost to the project should be included as leveraging or factored into the evaluation of costs.

On the first issue, the provisions for donated land preference are based on statute, and pertain to land donated by States, units of local government, public bodies, and nonprofit organizations. The 1-year ownership restriction was added to prevent abuse of this preference and may be waived by the State Director if it is clearly documented that there was no intent to circumvent the provisions.

On the issue of including donated land as leveraged assistance or factoring the value into the evaluation of costs,

the regulations do provide for this. Section 1944.211(a)(4) provides that the borrower's contribution may be in the form of cash, land, or a combination thereof. Any land value (as determined by the appraisal) that exceeds the borrower's required contribution may be considered leveraged assistance up to the amount which, when added to the loan and grant amounts from all sources, does not exceed the security value of the project. This applies to all donated land; therefore, donated land meeting the provisions of § 1944.211(a)(4) may receive 5 points under the donated land scoring factor and may also be eligible for points for leveraged assistance under the leveraged assistance factor. We have revised the point score factor for leveraged assistance to remove the exclusion of donated land.

Other Scoring Factors

Several commentors suggested additional factors for scoring loan requests. One commentor recommended awarding points for proposals in communities with RUS financed water or sewer systems to encourage total rural development. We agree there is merit in encouraging total rural development; however, awarding points for RUS financed facilities would penalize other communities with adequate systems that were not developed through RUS, or communities whose residents are unable to support the cost of these systems. In developing the interim final rule, we considered a similar provision whereby communities would be required to have water and sewer systems to qualify as a designated place; however, for the same reason, i.e., that communities that could not support the cost would be penalized, we did not adopt this provision. Another commentor noted that leveraged assistance should not dominate the scoring, and suggested other factors to consider such as design, construction quality, experience of the development team, resident services, ease of maintenance, and compatibility with the community. We agree these factors are critical to a successful proposal and, in developing the interim final rule, we considered awarding points for many of these same factors. However, we felt it would not be possible to develop standards for factors that require subjective judgments, such as an assessment of quality or experience, that could be equally applied to all proposals. With our competitive selection process, we believe it is essential to maintain an objective scoring process and, therefore, we have not adopted these factors.

Nonprofit Preference

One commentor supported the preference for nonprofit applicants but asked for clarification on how the preference was given; another commentor stated that loan requests from nonprofit applicants should be selected by merit and not by lottery. In response to the first comment, preference is given to loan requests from nonprofit or public body applicants meeting the provisions of § 1944.231(e) by giving preference in the event of point score ties. If there are point score ties for loan requests from two or more applicants meeting the provisions of § 1944.231(e), selection is made by lottery. In response to the suggestion that applicants be selected by merit and not by lottery, we feel it would not be possible to develop objective standards for judging the quality or experience of applicants that could be uniformly applied; therefore, we have retained the lottery provisions for point score ties.

Conditional Commitments

Two commentors recommended that the Agency issue a conditional or ''soft'' commitment when funding from other sources is contingent upon RHS funding. We recognize that this has been a problem in many instances, with both parties wanting the other to make the first commitment. The following policy will be followed: The Agency will publish NOFA as early in the year as possible to coordinate with other funding cycles. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be scored and ranked based on the requested funds: *Provided,* That (1) the applicant includes evidence of a filed application for funds, and (2) the funding date of the requested funds will permit processing of the loan request in the current year, or, in the event the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. States will issue a conditional commitment letter to the applicant with a specific deadline for providing a commitment of funds from the other lender. If the deadline is not met, the application will be returned as incomplete. The next highest ranked proposal will then be selected for further processing.

*(2) Assurances That the Amount of Assistance Provided is No More Than Necessary*

Section 1944.213 was revised in the interim final rule to implement the statutory reforms pertaining to necessary assistance. Four commentors expressed their support for these provisions and recommended minor revisions as follows:

Developer's Fees

One commentor noted that the section on developer's fees was included twice, once in § 1944.213(a)(1)(iv) and again in § 1944.213(a)(2). This error has been corrected in the final rule.

Fee Norms

One commentor expressed support for the fee norms in § 1944.213(a)(1) but suggested that the rule clarify that the fee norms are to be used only in cases where an executed Memorandum of Understanding (MOU) with the state agency is not in effect.

The regulation pages provided to RHS staff included a provision to this effect, as well as other administrative guidance, that was not published in the **Federal Register**. Interested parties may obtain a copy of the regulation pages from any Rural Development office.

Loan Request Analysis

The same commentor expressed support for the requirement that RHS consult with the applicant and the state allocating agency in cases of potential excess assistance to strive to reach an agreement for reducing any excess, and asked that the phrase ''and state agency'' be added after the words, ''In the event that excess assistance is not reduced through an agreement with the applicant,'' in § 1944.213(a)(3)(iii). This revision has been made in the final rule.

Excess Assistance

Two commentors suggested that if excess assistance is determined, the funds be put into project reserves or otherwise used to benefit the project, instead of reducing the amount of assistance. One of the commentors noted that current mandated reserve levels are minimal and it would make good sense to increase the reserve level.

We agree that additional funds could be used to benefit the project; however, we do not believe this would be consistent with our statutory mandate to provide only the amount of assistance necessary for the development of the project. As a point of interest, the project reserve requirements are being revised as part of the reinvention effort, which should alleviate the problems we

have experienced because of underfunded reserves.

In addition to the reforms discussed above, this rule includes a change in the maximum loan term for Section 515 loans from 50 years to 30 years. This change is mandated by Pub. L. 105–86, enacted November 18, 1997.

**Implementation Proposal**

The provisions of this rule become effective 30 days from the date of publication and all loans will be processed in accordance with the revised regulations. The final rule changes the income basis for the ranking data from 60 percent of county rural median income to 30 percent and increases the number of designated places that may be selected. This, in turn, may affect loan requests on hand that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application prior to November 7, 1996 (the date Agency staff were advised not to issue additional AD–622s pending the implementation of the new statutory requirements). For purposes of this discussion, these loan requests will be referred to as ''AD–622s''.

The interim final rule announced the Agency's intent to fund AD–622s on hand, in date order received, provided they met the new statutory requirements and were in designated places. Agency staff were directed to return AD–622s that were not in designated places. This was later amended by a Notice published in the **Federal Register** (62 FR 32752) on June 17, 1997, which directed Agency staff to hold the AD–622s until after the publication of the final rule because of anticipated changes in the designated place requirements.

Based on the large number of comments supporting an increase in the number of designated places, the final rule has been modified to allow States to select designated places up to 10 percent of their total rural places. Places currently on the designated place list will remain on the list for the duration of their 3-year designation period or until removed or deferred in accordance with § 1944.229(d). States may add places from the new ranking list up to the maximum 10 percent.

Using the revised place list, States may process AD–622s in designated places, in date order the complete application was received, up to the amount of the State's allocation. Existing AD–622s may be processed in this manner until the beginning of FY 2000. As in FY 1997, NOFA for FY 1998 will list those States that have AD–622s on hand that will use their direct allocation.

**List of Subjects in 7 CFR Part 1944**

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

### Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.205 is amended in the definition of ''Eligible tenants or cooperative members'' by revising the words ''exhibit C of subpart A of this part 1944 (available in any FmHA or its successor agency under Pub. L. 103–354 office)'' to read ''7 CFR 3550.53'', and by adding in alphabetical order definitions to read as follows:

**§ 1944.205 Definitions.**

* * * * *

*EZ/EC*. Empowerment Zone or Enterprise Community.

* * * * *

*REAP*. Rural Economic Area Partnership.

* * * * *

3. Section 1944.213 is amended by removing paragraph (a)(1)(iv), in paragraph (a)(3)(iii) by adding the words ''and state agency'' following the words ''In the event that excess assistance is not reduced through an agreement with the applicant''; and by adding the word '', LIHTC'' following the word ''HUD'' in the introductory text of paragraph (f)(2) and in the first sentence of paragraphs (f)(2)(ii) and (f)(2)(iii).

4. Section 1944.214 is amended by revising paragraph (b) to read as follows:

**§ 1944.214 Rates and terms.**

* * * * *

(b) *Amortization period*. Each loan will be scheduled for payment within a period that is necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 30 years; however, if necessary to ensure affordability, the loan may be amortized for a period not to exceed 50 years.

5. Section 1944.228 is amended in paragraphs (c)(1) and (c)(3) by revising the words ''60 percent'' to read ''30 percent''.

6. Section 1944.229 is amended by revising paragraphs (a), (b)(1), (c), and (d), and by adding a new paragraph (f) to read as follows:

**§ 1944.229 Establishing the list of designated places for which Section 515 applications will be invited.**

* * * * *

(a) *Establishing the number of designated places*. Initially, the number of designated places may equal up to 10 percent of the state's total eligible rural places ranked in accordance with § 1944.228, but must equal, in all cases, at least 10 places. For example, in a state with 1,000 total rural places, the State may designate up to 10 percent, or 100 places. However, in a state with 60 total rural places, the State would use the minimum number of 10 places, since 10 percent of 60 equals 6. In states where 10 percent equals more than the minimum number of 10, consideration in determining the number of places to include on the list should be given to the size and population of the state, funding levels, and the potential for leveraging. If warranted by funding levels, the Administrator may authorize in NOFA the selection of designated places up to 20 percent of the States' total rural places.

(1) States may designate a higher number of places than 10 percent or the minimum 10 places to reach high-need areas in accordance with paragraph (c)(3) of this section.

(2) States that anticipate high loan activity because of leveraging may designate a number of places higher than 10 percent or the minimum 10 places with the concurrence of the National Office.

(b) * * *

(1) Must have 250 or more households as a minimum feasibility threshold for multi-family housing, or, for Indian reservations, must have 250 or more households within the boundaries of the reservation; and

* * * * *

(c) *Selection of designated places*. Places meeting the requirements of paragraph (b) of this section will be selected from the ranking list as follows:

(1) At least 80 percent of the State's total designated places must be selected in rank order from the list.

(2) With concurrence from the National Office, up to 20 percent of the State's designated places may be selected for geographic diversity. For example, in a state with 1,000 total rural places, the State has elected to select designated places equal to the maximum 10 percent, or 100 places. Of

the 100 places, at least 80 percent, or 80 places, must be selected from the places that meet the requirements of paragraph (b) of this section in order of their ranking; up to 20 percent, or 20 places, may be selected for geographic diversity. Places selected for geographic diversity must be the highest ranked place in each geographic division designated by the State, which must correspond with established State divisions, such as districts, regions, or servicing areas.

(3) In addition to the designated places selected in accordance with paragraphs (c)(1) and (c)(2) of this section, States may designate the following high need areas for multi-family housing:

(i) Places identified in the state Consolidated Plan or similar state plan or needs assessment report.

(ii) EZ/ECs, Indian reservations or communities located within the boundaries of tribal allotted or trust land, colonias, or REAP communities.

(d) *Length of designation*. Places will remain on the list of designated places for 3 years or until a loan request is selected for funding or the community is otherwise deferred for other ''build and fill'' conditions, whichever occurs first. Places that are deferred before the end of the 3-year designation period will be reviewed annually for potential inclusion on the next year's list of designated places. A place may be removed from the list prior to the end of the 3-year designation period because of a substantial loss of income-eligible population or an increase in the affordable rental housing supply, for example, a place that experiences the closing of a military base or other major employer.

* * * * *

(f) *Partnership designated place list*. States with an active leveraging program and formal partnership agreement with the state agency may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator. Ranking and selection of loan requests for places on the partnership designated place list will be in accordance with § 1944.231(b)(3)(iii) and § 1944.231 (b)(6) of this subpart.

7. Section 1944.231 is amended by revising paragraphs (b)(2)(iii)(A) and (b)(2)(iii)(B), and by adding paragraphs (b)(3)(iii) and (b)(6) to read as follows:

**§ 1944.231 Processing loan requests.**

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing. Eligible types of leveraged assistance include loans and grants from other sources, contributions from the borrower above the required contribution indicated by the Sources and Uses Comprehensive Evaluation, and tax abatements or other savings in operating costs provided that, at the end of the abatement period when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Scoring will be based on the presence and extent of leveraged assistance for each loan request compared to the other loan requests being reviewed, computed as a percentage of the total development cost of the units that will serve RHS income-eligible tenants. A total monetary value will be determined for leveraged assistance such as tax abatements or services in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: the proposal will be scored based on the requested funds: *Provided,* that the applicant includes evidence of a filed application for the funds; *and* the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. The Agency will issue a conditional commitment to the applicant with a specific deadline for providing a commitment of funds from the other source. If the deadline is not met, the application will be returned as incomplete and the next ranked proposal will be processed. (0 to 20 points)

(B) The loan request is for units to be developed in a colonia, tribal land, EZ/EC, or REAP community, or in a place identified in the state Consolidate Plan or state needs assessment as a high need community for multi-family housing. (20 points)

* * * * *

(3) * * *

(iii) States with a partnership designated place list developed in accordance with § 1944.229(f) of this subpart, will score and rank loan requests as follows:

(A) All loan requests (including those for places on the partnership designated place list) will be reviewed and scored together as one group, following the process described in paragraph (b)(2) of this section.

(B) Using the point score and rank order established in accordance with paragraphs (b)(3)(i) and (b)(3)(ii) of this section, two separate ranking lists will be formed: the RHS ranking list will consist of loan requests for places on the State's designated place list; the partnership ranking list will consist of loan requests for places on the partnership designated place list. Selection of loan requests for further processing will be in accordance with paragraph (b)(6) of this section.

* * * * *

(6) *Selection of loan requests for further processing for States with a partnership ranking list*. States with a partnership ranking list developed in accordance with paragraph (b)(3)(iii) of this section, will use the following process:

(i) Loan requests must first be selected in rank order from the RHS ranking list that, based on total development cost (TDC), are proportionate to the State's RHS allocation amount.

(ii) After loan requests have been selected in accordance with paragraph (b)(6)(i) of this section, remaining RHS funds must be used for the next highest scoring loan requests (or point score and tie-breaker number assigned in accordance with paragraph (b)(3) of this section), regardless of whether they are on the RHS ranking list or the partnership ranking list.

* * * * *

8. Section 1944.233 is amended in paragraph (a)(3) by revising both occurrences of the words ''debt service'' to read ''basic rent'', and in paragraph (b)(5) by revising the words ''a debt service'' to read ''basic rents''.

9. Exhibit A of subpart E is amended in section IV.B.2.c. in the second sentence by revising the words ''50 years'' to read ''30 years, with an amortization period not to exceed 50 years.''

10. Exhibit A–7 of subpart E is amended by removing paragraph VII and by redesignating paragraphs VIII and IX as paragraphs VII and VIII respectively.

11. Exhibit A–9 off subpart E is amended by adding a new paragraph 17 to read as follows:

Exhibit A–9—Additional Information To be Submitted for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loan Requests

* * * * *

17 Comments must be submitted in accordance with 7 CFR, part 3015, subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See RD Instruction 1940–J (available in any Rural Development office).

12. Exhibit H of subpart E is amended in the fourth sentence by revising the words ''50-year maximum life of the loan'' to read ''30-year maximum life of the loan''.

Dated: December 18, 1997.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 97–33396 Filed 12–22–97; 8:45 am]

BILLING CODE 3410–XV–U

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 1998 (FY 1998). This action is taken to comply with 42 U.S.C. 1490p which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

**EFFECTIVE DATE:** December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Reese-Foxworth, Senior Loan Officer, Multi-Family Housing Processing Division, Room 5337 (STOP 0781), or Gloria Denson, Senior Loan Officer, Single Family Housing Processing Division, Room 5334, (STOP 0783), U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, D.C., 20250, telephones (202) 720–1604, and (202) 720–1474, respectively. (These are not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

#### Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' The following guidance has been provided to our State Offices on FY 1998 appropriations and access to funds. Separate guidance has been provided to our State Offices for assistance available in our Multi- and Single-Family Housing Programs as follows:

#### Multi-Family Housing

*I. General*

A. This provides MFH allocations for the Rural Rental Housing Program (RRH) to individual States for FY 1998. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 1998, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) section 504 Rural Housing Grants, and section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan levels for FY 1998 are as follows:

| | |
|---|---|
| MFH Loan Programs Credit Sales | $4,000,000 |
| Section 514 Farm Labor Housing (LH) Loans | 15,000,000 |
| Section 515 Rural Rental Housing (RRH): | |
| New Construction & Equity Loans | 105,000,000 |
| Section 515 Rural Rental Housing (RRH): | |
| Rehabilitation/Repair Loans | 45,000,000 |
| Section 516 LH Grants (RHAG) | 10,000,000 |
| Section 521 Rental Assistance (RA): | |
| RRH New Construction | 27,167,208 |
| Labor Housing | 4,511,160 |
| Section 525 or 509 Housing Application: | |
| Packaging Grants (RHAG) | 1,000,000 |
| Section 533 Housing Preservation: | |
| Grants (HPG) (RHAG) | 10,820,000 |
| Section 538 Guaranteed Rural Rental: | |
| Housing Program * | ([1]) |

* The program has been authorized for FY 1998. The Agency is currently working toward the completion of the regulations and establishing the program level for this fiscal year. It is anticipated that a Notice of Funding Availability (NOFA) will be issued at a date to be announced later.

[1] To be determined.

*II. Funds not Allocated to States*

A. *Credit Sales Authority.* For FY 1998, $4,000,000 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State. When this loan authority is expended, States will resume the use of the appropriate loan funds to finance sales to program eligible buyers.

B. *Section 514 Farm LH Loans.*

1. These loans are funded in accordance with 7 CFR 1940.579(a).

| | |
|---|---|
| FY 1998 appropriation | $15,000,000 |
| Available for off-farm loans | 8,000,000 |
| Available for on-farm loans | 1,000,000 |
| Available for Rehab/Repair | 3,000,000 |
| National Office reserve | 3,000,000 |

2. *Section 516 LH Grants.* The grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

| | |
|---|---|
| FY 1998 Appropriation | $10,000,000 |
| Available for LH Grants | 7,000,000 |
| National Office Reserve | 3,000,000 |

*III. Section 515 RRH and Section 521 RA Funds (Allocated to the States)*

State allocations have been developed with the methodology and formulas stated in 7 CFR part 1940, subpart L.

A. *Section 515 RRH Loan Funds (for New Construction Loans):*

*Amount Available for Allocation.* See the end of this Notice for State allocations.

| | |
|---|---|
| Total available | $105,000,000 |
| Less set-aside for nonprofits | 9,450,000 |
| Less set-aside for under-served counties and colonias | 5,250,000 |
| Less general reserve | 11,550,000 |
| Less designated reserve | 7,500,000 |
| Total Available for Allocation | 71,250,000 |

1. *National Office Reserves.* These reserves are broken down as follows:

| | |
|---|---|
| General reserve | $11,550,000 |
| Designated reserves: | |
| State RA | 2,500,000 |
| Equity | 5,000,000 |
| Total National Office Reserve | 19,050,000 |

2. *National Office Set-asides.* The following legislatively mandated set-asides of funds are part of the National Office Set-aside:

| | |
|---|---|
| Nonprofit set-aside | $9,450,000 |
| Underserved counties and colonias | 5,250,000 |

B. *Rental Assistance (RA).* A total of $31,678,368 will be available for RRH new construction RA, of which $4,511,160 is available for LH new construction RA. This amount equates to an estimated 2,528 units for the new construction RRH loan program.

| | |
|---|---|
| Estimated total new construction: | |
| RA units available | 2,528 |
| Less Labor Housing (LH) | 360 |
| Subtotal Available for allocation to States | 2,168 |
| Less Set-aside | 275 |
| Less National Office Reserve | 200 |
| Total state allocated new construction RA units | 1,693 |

*IV. State Allocations for Rehabilitation/ Repair Loans*

A. *Repairs and Rehabilitation.* States with repair and or rehabilitation loans will have a separate Section 515 allocation for repair and rehabilitation loans. These funds may not be used for the purpose of new construction. Tenant health and safety continues to be a priority. Allocated repair and rehabilitation funds must be FIRST targeted to RRH facilities that have physical conditions that effect the health and safety of tenants and then made available to facilities that have deferred maintenance. See the end of this Notice for State repairs and rehabilitation allocations.

B. *Section 515 RRH Loan Funds (for Repairs and Rehabilitation):*

| | |
|---|---|
| Amount Available for Allocation: | |
| Rehab and repair appropriation | $45,000,000 |
| General reserve | 5,000,000 |
| Total Available for Distribution | 40,000,000 |

*V. Section 533 Housing Preservation Grants (HPG)*

Amount Available for Allocation. See end of this Notice for HPG State allocations.

| | |
|---|---|
| Total available | $10,820,000 |
| Less reserve | 541,000 |
| Less Designated Set-Aside EZ/EC | 600,000 |
| Total Available for Distribution | 9,679,000 |

*VI. Useful dates to remember*

*Mar. 15, 1998:* Last day to submit documentation to participate in State RA reserve.

*February 23, 1998:* Last day to submit applications to the National Office for the Nonprofit and Underserved/ Colonias Set-Asides.

*May 18, 1998:* Estimated last day for applicants to file HPG preapplications. Estimated date for pooling of Section 515 Rehab/repair loans funds and RA.

*August 14, 1998:* Estimated date for new construction RRH and RA to be pooled.

**Single Family Housing (SFH)**

*I. General*

A. This provides SFH allocations for programs available to individual States for Fiscal Year (FY) 1998. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568 of this instruction. For FY 1998, State Directors will have the flexibility to transfer up to 25 percent of their initial allocations of budget authority between the section 504 Rural Housing Grant program and the section 533 Housing Preservation Grant program.

B. The SFH levels authorized (including carry-over balances) for FY 1998 are as follows:

| | |
|---|---|
| Section 502 Guaranteed Rural Housing (RH) Loans: | |
| Nonsubsidized Guarantees | $3,000,000,000 |
| Refinancing Guarantees** | 100,000,000 |
| Section 502 Direct RH Loans: | |
| Very Low-Income Subsidized Loans | 400,000,000 |
| Low-Income Subsidized Loans | 600,000,000 |
| Nonsubsidized Loans | 0 |
| Credit Sales (Program and Non Program) | 20,996,420 |
| Section 504 Housing Repair Loans | 29,977,000 |
| Section 504 Grants | 24,900,000 |
| Section 509 Compensation for Construction Defects* | 495,000 |
| Section 523 Mutual and Self Help Housing | 26,000,000 |
| Section 523 Self-Help Site Loans | 587,000 |
| Section 525 Supervisory and Technical Assistance Grants* | 231,000 |
| Section 524 RH Site Loans | 600,000 |
| Section 306C WWD Grants—(Carryover) | 1,508,313 |
| Sections 525/509 Housing Application: | |
| Packaging Grants (HAPG)—(Carryover)* | 808,000 |
| Natural Disaster Funds | ([1]) |

* Unobligated or canceled funds from prior FY have been added to the amount shown.

** $100 million for loans to refinance section 502 Direct loans with guaranteed funds. These funds will be held until July 1, 1998, pending passage of a statutory provision to permit using guaranteed funds for refinancing 502 direct loans. If the statutory provision is not passed by July 1, 1998, these funds will be used for nonsubsidized guarantees. This $100 million is included in the $3 billion for nonsubsidized guarantees.

[1] To be determined.

C. SFH Funding not allocated to States:

1. *Section 502 direct nonsubsidized funds (loan making and servicing).* There were no FY 1998 funds designated for loans for nonsubsidized loan making or servicing. Subsidized funds will continue to be used for qualified very low- and low-income applicants when the payment subsidy

formula shows there is no need for the subsidy.

2. *Credit sale authority.* For FY 1998, $20,996,420 is available for Real Estate Owned (REO) credit sales to SFH program and nonprogram buyers. Credit sale authority will not be allocated by State.

3. *Section 509 Compensation for Construction Defects.* The approval official must determine that the construction is defective, in accordance with 7 CFR 1924.265. All claims for compensation for construction defects must be submitted to the National Office for authorization of funds prior to approval.

4. *Section 523 Mutual and Self-Help Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

5. *Section 523 Mutual and Self-Help Technical Assistance Grants.* A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) Contractor on all predevelopment, new, and existing (refunding) grant applications. This analysis is a prerequisite for approval for all grant requests with the exception of those grants that were funded at 75 percent of the total grant authorized for the grantee in Fiscal Year (FY) 1997.

6. *Section 524 RH Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

7. *Sections 525/509 Housing Application Packaging Grants (HAPG).* To be determined.

8. *Deferred Mortgage Payment Demonstration.* There is no funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

## II. State Allocations

A. *Section 502 nonsubsidized guaranteed RH loans.*

| | |
|---|---|
| Amount Available for Allocation: | |
| Total Available | $3,000,000,000 |
| Less National Office Reserve | 450,000,000 |
| Less Base Allocation | 0 |
| Less Refinancing Section 502 Direct | 100,000,000 |
| Basic Formula—Administrative Allocation | 2,450,000,000 |

B. *Section 502 Direct RH Loans.*

| | |
|---|---|
| Amount Available for Allocation: | |
| Total Available | $1,000,000,000 |
| Less required set aside for Underserved counties/colonias | $50,000,000 |
| Less General Reserve | 38,500,000 |
| Administrator's Reserve | 15,000,000 |
| Hardships | 2,000,000 |
| Homelessness | 1,500,000 |
| Homeownership Partnerships | 15,000,000 |
| Rural Housing Demonstration Program | 5,000,000 |
| Less Designated Reserves | 165,000,000 |
| Self-Help | 150,000,000 |
| Targeted | 15,000,000 |
| Basic Formula Administrative Allocation | 747,000,000 |

*C. Section 504 Housing Loans/Grants*

Section 504 Grant funds are included in the Rural Housing Assistance Grant Program (RHAG) in the FY 1998 Appropriation. Funds included in RHAG may be transferred in accordance with Public Law 105–86.

| | |
|---|---|
| Amount available for allocation: | |
| Section 504 Loans: | |
| Total Available | $29,977,000 |
| Less 5% for Underserved Counties and Colonias | 1,500,000 |
| Less General Reserve | 2,000,000 |
| Less Designated Targeted Reserve | 2,000,000 |
| Basic Formula—Administrative Allocation | 24,477,000 |
| Section 504 Grants: | |
| Total Available | 24,900,000 |
| Less 5% for 100 Underserved Counties or Colonias | 1,245,000 |
| Less General Reserve | 1,494,000 |
| Less Targeted Reserve | 1,494,000 |
| Basic Formula-Administrative Allocation | 20,667,000 |

Dated: December 16, 1997.

**Jan E. Shadburn,**

*Administrator, Rural Housing Service.*

**BILLING CODE 3410–XV–U**

**RURAL HOUSING SERVICE**
**SECTION 515 RURAL RENTAL HOUSING PROGRAM**

**FY 1998 NEW CONSTRUCTION STATE ALLOCATIONS**

| STATE | FORMULA FACTOR | STATE FORMULA ALLOC. | BASE ALLOC. | TOTAL NEW CONSTRUCT. ALLOC. | NEW CONSTRUCT. RA UNITS | FY 1998 NEW CONSTR. RA VALUES | RA DOLLAR VALUE |
|---|---|---|---|---|---|---|---|
| AL | 0.02957 | $ 1,619,156 | | $ 1,619,156 | 38 | $ 11,706 | $ 444,828 |
| AK | 0.00587 | $ 321,422 | $ 678,578 | $ 1,000,000 | 24 | $ 17,844 | $ 428,256 |
| AZ | 0.01780 | $ 974,670 | | $ 974,670 | 23 | $ 14,862 | $ 341,826 |
| AR | 0.02310 | $ 1,264,880 | | $ 1,264,880 | 30 | $ 10,766 | $ 322,980 |
| CA | 0.04653 | $ 2,547,830 | | $ 2,547,830 | 61 | $ 11,429 | $ 697,169 |
| CO | 0.00840 | $ 459,956 | $ 540,044 | $ 1,000,000 | 24 | $ 11,280 | $ 270,720 |
| DE | 0.00190 | $ 104,038 | $ 895,962 | $ 1,000,000 | 24 | $ 15,143 | $ 363,432 |
| MD | 0.00880 | $ 481,859 | $ 518,141 | $ 1,000,000 | 24 | $ 15,074 | $ 361,776 |
| FL | 0.02890 | $ 1,582,469 | | $ 1,582,469 | 38 | $ 10,450 | $ 397,100 |
| VI | 0.00273 | $ 149,486 | $ 850,514 | $ 1,000,000 | 24 | $ 22,792 | $ 547,008 |
| GA | 0.03867 | $ 2,117,442 | | $ 2,117,442 | 50 | $ 8,556 | $ 427,800 |
| HI | 0.00790 | $ 432,578 | $ 567,422 | $ 1,000,000 | 24 | $ 13,344 | $ 320,256 |
| WPA | 0.00000 | $ - | $ 1,000,000 | $ 1,000,000 | 24 | $ 11,190 | $ 268,560 |
| ID | 0.00743 | $ 406,842 | $ 593,158 | $ 1,000,000 | 24 | $ 10,865 | $ 260,760 |
| IL | 0.02250 | $ 1,232,026 | | $ 1,232,026 | 29 | $ 10,441 | $ 302,789 |
| IN | 0.02157 | $ 1,181,102 | | $ 1,181,102 | 28 | $ 9,181 | $ 257,068 |
| IA | 0.01340 | $ 733,740 | $ 266,260 | $ 1,000,000 | 24 | $ 9,584 | $ 230,016 |
| KS | 0.01130 | $ 618,751 | $ 381,249 | $ 1,000,000 | 24 | $ 8,551 | $ 205,224 |
| KY | 0.03483 | $ 1,907,177 | | $ 1,907,177 | 45 | $ 11,353 | $ 510,885 |
| LA | 0.03170 | $ 1,735,788 | | $ 1,735,788 | 41 | $ 12,495 | $ 512,295 |
| ME | 0.00913 | $ 499,929 | $ 500,071 | $ 1,000,000 | 24 | $ 19,311 | $ 463,464 |
| MA | 0.00793 | $ 434,221 | $ 565,779 | $ 1,000,000 | 24 | $ 16,831 | $ 403,944 |
| CT | 0.00453 | $ 248,048 | $ 751,952 | $ 1,000,000 | 24 | $ 13,940 | $ 334,560 |
| RI | 0.00100 | $ 54,757 | $ 945,243 | $ 1,000,000 | 24 | $ 16,229 | $ 389,496 |
| MI | 0.02977 | $ 1,630,108 | | $ 1,630,108 | 39 | $ 8,239 | $ 321,321 |
| MN | 0.01673 | $ 916,080 | | $ 916,080 | 22 | $ 10,062 | $ 221,364 |
| MS | 0.03180 | $ 1,741,264 | | $ 1,741,264 | 41 | $ 11,586 | $ 475,026 |
| MO | 0.02460 | $ 1,347,015 | | $ 1,347,015 | 32 | $ 8,073 | $ 258,336 |
| MT | 0.00620 | $ 339,492 | $ 660,508 | $ 1,000,000 | 24 | $ 10,007 | $ 240,168 |
| NE | 0.00713 | $ 390,415 | $ 609,585 | $ 1,000,000 | 24 | $ 8,347 | $ 200,328 |
| NV | 0.00263 | $ 144,010 | $ 855,990 | $ 1,000,000 | 24 | $ 13,598 | $ 326,352 |
| NJ | 0.00657 | $ 359,752 | $ 640,248 | $ 1,000,000 | 24 | $ 20,565 | $ 493,560 |
| NM | 0.01437 | $ 786,854 | $ 213,146 | $ 1,000,000 | 24 | $ 13,643 | $ 327,432 |
| NY | 0.02753 | $ 1,507,453 | | $ 1,507,453 | 36 | $ 13,255 | $ 477,180 |
| NC | 0.04497 | $ 2,462,410 | | $ 2,462,410 | 59 | $ 13,224 | $ 780,216 |
| ND | 0.00413 | $ 226,145 | $ 773,855 | $ 1,000,000 | 24 | $ 9,159 | $ 219,816 |
| OH | 0.03450 | $ 1,889,107 | | $ 1,889,107 | 45 | $ 10,001 | $ 450,045 |
| OK | 0.01917 | $ 1,049,686 | | $ 1,049,686 | 25 | $ 10,128 | $ 253,200 |
| OR | 0.01423 | $ 779,188 | $ 220,812 | $ 1,000,000 | 24 | $ 10,959 | $ 263,016 |
| PA | 0.03687 | $ 2,018,880 | | $ 2,018,880 | 48 | $ 11,538 | $ 553,824 |
| PR | 0.04923 | $ 2,695,673 | | $ 2,695,673 | 64 | $ 15,902 | $ 1,017,728 |
| SC | 0.02690 | $ 1,472,956 | | $ 1,472,956 | 35 | $ 12,315 | $ 431,025 |
| SD | 0.00597 | $ 326,898 | $ 673,102 | $ 1,000,000 | 24 | $ 12,365 | $ 296,760 |
| TN | 0.02973 | $ 1,627,917 | | $ 1,627,917 | 39 | $ 10,044 | $ 391,716 |
| TX | 0.07645 | $ 4,186,151 | | $ 4,186,151 | 99 | $ 10,503 | $ 1,039,797 |
| UT | 0.00430 | $ 235,454 | $ 764,546 | $ 1,000,000 | 24 | $ 13,163 | $ 315,912 |
| VT | 0.00403 | $ 220,670 | $ 779,330 | $ 1,000,000 | 24 | $ 16,304 | $ 391,296 |
| NH | 0.00503 | $ 275,426 | $ 724,574 | $ 1,000,000 | 24 | $ 15,581 | $ 373,944 |
| VA | 0.02660 | $ 1,456,529 | | $ 1,456,529 | 35 | $ 10,867 | $ 380,345 |
| WA | 0.01743 | $ 954,410 | $ 45,590 | $ 1,000,000 | 24 | $ 9,925 | $ 238,200 |
| WV | 0.01937 | $ 1,060,638 | | $ 1,060,638 | 25 | $ 9,875 | $ 246,875 |
| WI | 0.01873 | $ 1,025,593 | | $ 1,025,593 | 24 | $ 8,245 | $ 197,880 |
| WY | 0.00307 | $ 168,103 | $ 831,897 | $ 1,000,000 | 24 | $ 10,883 | $ 261,192 |
| DISTR. | 0.99353 | $ 54,402,444 | $ 16,847,556 | $ 71,250,000 | 1693 | | $ 20,506,066 |
| N/O RESV. | | | | $ 33,750,000 | 475 | | |
| TTL. AVAIL. | | | | $ 105,000,000 | 2168 | | |

**RURAL HOUSING SERVICE**
**Section 515 - Repair/Rehabilitation Allocations**
**Multi-Family Housing**

| STATE | % OF PORT-FOLIO | RHS LOAN AMT. REQ. FROM 9/97 SURVEY | UNITS | PORTFOLIO % ALLOC. | ADMIN. ALLOC. | TOTAL PORTFOLIO ALLOC. |
|---|---|---|---|---|---|---|
| AL | 3.49% | $ 2,083,000 | 15,952 | $ 1,544,662 | $ - | $ 1,544,662 |
| AK | 0.19% | | 847 | | | |
| AZ | 0.79% | $ 520,000 | 3,597 | $ 348,304 | $ - | $ 348,304 |
| AR | 2.19% | $ 6,564,742 | 9,991 | $ 967,447 | $ - | $ 967,447 |
| CA | 4.74% | $ 8,035,381 | 21,642 | $ 2,095,636 | $ - | $ 2,095,636 |
| CO | 0.74% | $ 676,000 | 3,373 | $ 326,614 | $ - | $ 326,614 |
| DE | 0.28% | $ 570,000 | 1,300 | $ 125,881 | $ - | $ 125,881 |
| MD | 1.14% | $ 1,389,736 | 5,187 | $ 502,267 | $ - | $ 502,267 |
| FL | 4.25% | $ 2,959,868 | 19,405 | $ 1,879,023 | $ - | $ 1,879,023 |
| VI | 0.08% | $ 242,500 | 375 | $ 36,312 | $ 63,688 | $ 100,000 |
| GA | 3.53% | $ 1,592,200 | 16,108 | $ 1,559,768 | $ - | $ 1,559,768 |
| HI | 0.18% | | 841 | | | |
| WPA | 0.00% | | | | | |
| ID | 1.08% | | 4,950 | | | |
| IL | 2.51% | $ 4,888,605 | 11,468 | $ 1,110,468 | $ - | $ 1,110,468 |
| IN | 3.22% | $ 1,538,976 | 14,710 | $ 1,424,397 | $ - | $ 1,424,397 |
| IA | 3.09% | $ 392,000 | 14,104 | | | $ 392,000 |
| KS | 1.43% | $ 3,287,100 | 6,516 | $ 630,957 | $ - | $ 630,957 |
| KY | 2.58% | $ 1,011,750 | 11,809 | | | $ 1,011,750 |
| LA | 2.54% | $ 2,834,400 | 11,598 | | | $ 1,469,064 |
| ME | 1.73% | $ 4,275,000 | 7,885 | $ 763,520 | $ - | $ 763,520 |
| MA | 0.53% | $ 100,000 | 2,407 | | | $ 100,000 |
| CT | 0.53% | | 2,399 | | | |
| RI | 0.09% | | 421 | | | |
| MI | 4.22% | $ 4,021,584 | 19,280 | $ 1,866,919 | $ - | $ 1,866,919 |
| MN | 2.88% | $ 2,552,890 | 13,169 | $ 1,275,179 | $ - | $ 1,275,179 |
| MS | 3.38% | $ 3,580,923 | 15,462 | $ 1,497,215 | $ - | $ 1,497,215 |
| MO | 4.34% | $ 870,000 | 19,826 | | | $ 870,000 |
| MT | 0.53% | $ 500,000 | 2,407 | $ 233,074 | $ - | $ 233,074 |
| NE | 0.84% | $ 360,500 | 3,854 | | | $ 360,500 |
| NV | 0.43% | $ 200,000 | 1,950 | $ 188,822 | $ - | $ 188,822 |
| NJ | 0.74% | | 3,395 | | | |
| NM | 0.80% | $ 710,000 | 3,660 | $ 354,405 | $ - | $ 354,405 |
| NY | 2.79% | $ 1,593,610 | 12,752 | $ 1,234,800 | $ - | $ 1,234,800 |
| NC | 4.63% | $ 7,224,327 | 21,151 | $ 2,048,091 | $ - | $ 2,048,090 |
| ND | 0.78% | $ 320,000 | 3,551 | | | $ 320,000 |
| OH | 3.34% | $ 3,096,700 | 15,245 | $ 1,476,202 | $ - | $ 1,476,202 |
| OK | 1.73% | $ 8,695,001 | 7,909 | $ 765,843 | $ - | $ 765,843 |
| OR | 1.30% | $ 2,300,000 | 5,935 | $ 574,697 | $ - | $ 574,697 |
| PA | 2.33% | $ 2,090,980 | 10,651 | $ 1,031,357 | $ - | $ 1,031,357 |
| PR | 1.10% | | 5,040 | | | |
| SC | 2.77% | $ 4,294,250 | 12,638 | $ 1,223,762 | $ - | $ 1,223,762 |
| SD | 1.43% | $ 1,162,500 | 6,552 | $ 634,443 | $ - | $ 634,443 |
| TN | 2.87% | $ 4,165,036 | 13,112 | $ 1,269,660 | $ - | $ 1,269,660 |
| TX | 5.92% | $ 3,892,300 | 27,035 | $ 2,617,850 | $ - | $ 2,617,850 |
| UT | 0.46% | $ 1,750,000 | 2,124 | $ 205,671 | $ - | $ 205,671 |
| VT | 0.28% | $ 405,000 | 1,269 | $ 122,880 | $ - | $ 122,880 |
| NH | 0.68% | $ 1,950,000 | 3,097 | $ 299,888 | $ - | $ 299,888 |
| VA | 2.15% | $ 3,871,300 | 9,801 | $ 949,049 | $ - | $ 949,049 |
| WA | 2.04% | $ 822,000 | 9,322 | | | $ 822,000 |
| WV | 1.60% | $ 1,776,790 | 7,333 | $ 710,068 | $ - | $ 710,068 |
| WI | 2.32% | $ 511,500 | 10,597 | | | $ 511,500 |
| WY | 0.42% | $ 717,500 | 1,904 | $ 184,368 | $ - | $ 184,368 |
| DISTR. | 100.00% | $ 106,395,949 | 456,906 | $ 34,079,499 | $ 63,688 | $ 40,000,000 |
| N/O RESV. | | | | | | $ 5,000,000 |
| TTL. AVAIL. | | | | | | $ 45,000,000 |

**RURAL HOUSING SERVICE**
**FY 1998 Section 533 - Housing Preservation Grant Program Under RHAG**
**Multi-Family Housing**

| STATE | BASE ALLOCATION | FORMULA FACTOR | STATE FORMULA ALLOCATION | TOTAL ALLOCATION |
|---|---|---|---|---|
| AL | $100,000 | 0.02957 | $129,487 | $229,487 |
| AK | $100,000 | 0.00587 | $25,705 | $125,705 |
| AZ | $100,000 | 0.01780 | $77,946 | $177,946 |
| AR | $100,000 | 0.02310 | $101,155 | $201,155 |
| CA | $100,000 | 0.04653 | $203,755 | $303,755 |
| CO | $100,000 | 0.00840 | $36,784 | $136,784 |
| DE | $100,000 | 0.00190 | $8,320 | $108,320 |
| MD | $100,000 | 0.00880 | $38,535 | $138,535 |
| FL | $100,000 | 0.02890 | $126,553 | $226,553 |
| GA | $100,000 | 0.03867 | $169,336 | $269,336 |
| HI | $100,000 | 0.00790 | $34,594 | $134,594 |
| WPA | $100,000 | 0.00647 | $28,332 | $128,332 |
| ID | $100,000 | 0.00743 | $32,536 | $132,536 |
| IL | $100,000 | 0.02250 | $98,528 | $198,528 |
| IN | $100,000 | 0.02157 | $94,455 | $194,455 |
| IA | $100,000 | 0.01340 | $58,679 | $158,679 |
| KS | $100,000 | 0.01130 | $49,483 | $149,483 |
| KY | $100,000 | 0.03483 | $152,521 | $252,521 |
| LA | $100,000 | 0.03170 | $138,814 | $238,814 |
| ME | $100,000 | 0.00913 | $39,980 | $139,980 |
| MA | $100,000 | 0.00793 | $34,725 | $134,725 |
| CT | $100,000 | 0.00453 | $19,837 | $119,837 |
| RI | $100,000 | 0.00100 | $4,379 | $104,379 |
| MI | $100,000 | 0.02977 | $130,363 | $230,363 |
| MN | $100,000 | 0.01673 | $73,261 | $173,261 |
| MS | $100,000 | 0.03180 | $139,252 | $239,252 |
| MO | $100,000 | 0.02460 | $107,723 | $207,723 |
| MT | $100,000 | 0.00620 | $27,150 | $127,150 |
| NE | $100,000 | 0.00713 | $31,222 | $131,222 |
| NV | $100,000 | 0.00263 | $11,517 | $111,517 |
| NJ | $100,000 | 0.00657 | $28,770 | $128,770 |
| NM | $100,000 | 0.01437 | $62,926 | $162,926 |
| NY | $100,000 | 0.02753 | $120,554 | $220,554 |
| NC | $100,000 | 0.04497 | $196,924 | $296,924 |
| ND | $100,000 | 0.00413 | $18,085 | $118,085 |
| OH | $100,000 | 0.03450 | $151,076 | $251,076 |
| OK | $100,000 | 0.01917 | $83,945 | $183,945 |
| OR | $100,000 | 0.01423 | $62,313 | $162,313 |
| PA | $100,000 | 0.03687 | $161,454 | $261,454 |
| PR | $100,000 | 0.04923 | $215,578 | $315,578 |
| SC | $100,000 | 0.02690 | $117,795 | $217,795 |
| SD | $100,000 | 0.00597 | $26,143 | $126,143 |
| TN | $100,000 | 0.02973 | $130,188 | $230,188 |
| TX | $100,000 | 0.07645 | $334,775 | $434,775 |
| UT | $100,000 | 0.00430 | $18,830 | $118,830 |
| VT | $100,000 | 0.00403 | $17,647 | $117,647 |
| NH | $100,000 | 0.00503 | $22,026 | $122,026 |
| VI | $100,000 | 0.00273 | $11,955 | $111,955 |
| VA | $100,000 | 0.02660 | $116,481 | $216,481 |
| WA | $100,000 | 0.01743 | $76,326 | $176,326 |
| WV | $100,000 | 0.01937 | $84,821 | $184,821 |
| WI | $100,000 | 0.01873 | $82,019 | $182,019 |
| WY | $100,000 | 0.00307 | $13,444 | $113,444 |
| | | | | |
| DISTR. | $5,300,000 | 1.00000 | $4,379,000 | $9,679,000 |
| N/O RES. | | | | $541,000 |
| EZ SET ASIDE | | | | $600,000 |
| TTL AVAIL. | | | | $10,820,000 |

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

| STATES | STATE BASIC FORMULA FACTOR | STATE BASIC FORMULA / ADMININSTATIVE | TOTAL FY1998 ALLOCATION |
|---|---|---|---|
| ALABAMA | 0.0267275 | $19,923 | $19,923 |
| ALASKA | 0.0055160 | $4,112 | $4,112 |
| ARIZONA | 0.0145422 | $10,840 | $10,840 |
| ARKANSAS | 0.0208104 | $15,512 | $15,512 |
| CALIFORNIA | 0.0454819 | $33,902 | $33,902 |
| COLORADO | 0.0091766 | $6,840 | $6,840 |
| DELAWARE | 0.0024571 | $1,832 | $1,832 |
| MARYLAND | 0.0115334 | $8,597 | $8,597 |
| FLORIDA | 0.0312406 | $23,287 | $23,287 |
| GEORGIA | 0.0374586 | $27,922 | $27,922 |
| HAWAII | 0.0067195 | $5,009 | $5,009 |
| W PAC ISLANDS | N/A | $1,100 | $1,100 |
| IDAHO | 0.0076722 | $5,719 | $5,719 |
| ILLINOIS | 0.0266774 | $19,885 | $19,885 |
| INDIANA | 0.0270785 | $20,184 | $20,184 |
| IOWA | 0.0163474 | $12,185 | $12,185 |
| KANSAS | 0.0127369 | $9,494 | $9,494 |
| KENTUCKY | 0.0288838 | $21,530 | $21,530 |
| LOUISIANA | 0.0246715 | $18,390 | $18,390 |
| MAINE | 0.0108314 | $8,074 | $8,074 |
| MASSACHUSETTS | 0.0109818 | $8,186 | $8,186 |
| CONNECTICUT | 0.0066693 | $4,971 | $4,971 |
| RHODE ISLAND | 0.0015545 | $1,159 | $1,159 |
| MICHIGAN | 0.0353525 | $26,352 | $26,352 |
| MINNESOTA | 0.0199077 | $14,839 | $14,839 |
| MISSISSIPPI | 0.0250226 | $18,652 | $18,652 |
| MISSOURI | 0.0252733 | $18,839 | $18,839 |
| MONTANA | 0.0063685 | $4,747 | $4,747 |
| NEBRASKA | 0.0086752 | $6,466 | $6,466 |
| NEVADA | 0.0028583 | $2,131 | $2,131 |
| NEW JERSEY | 0.0097784 | $7,289 | $7,289 |
| NEW MEXICO | 0.0110320 | $8,223 | $8,223 |
| NEW YORK | 0.0359041 | $26,763 | $26,763 |
| NORTH CAROLINA | 0.0484405 | $36,108 | $36,108 |
| NORTH DAKOTA | 0.0045131 | $3,364 | $3,364 |
| OHIO | 0.0390131 | $29,080 | $29,080 |
| OKLAHOMA | 0.0174005 | $12,970 | $12,970 |
| OREGON | 0.0154949 | $11,550 | $11,550 |
| PENNSYLVANIA | 0.0467857 | $34,874 | $34,874 |
| PUERTO RICO | 0.0239695 | $17,867 | $17,867 |
| SOUTH CAROLINA | 0.0258249 | $19,250 | $19,250 |
| SOUTH DAKOTA | 0.0062682 | $4,672 | $4,672 |
| TENNESSEE | 0.0291846 | $21,754 | $21,754 |
| TEXAS | 0.0660415 | $49,226 | $49,226 |
| UTAH | 0.0040618 | $3,028 | $3,028 |
| VERMONT | 0.0052653 | $3,925 | $3,925 |
| NEW HAMPSHIRE | 0.0072711 | $5,420 | $5,420 |
| VIRGIN ISLANDS | 0.0020058 | $1,495 | $1,495 |
| VIRGINIA | 0.0289841 | $21,605 | $21,605 |
| WASHINGTON | 0.0187042 | $13,942 | $13,942 |
| WEST VIRGINIA | 0.0175008 | $13,045 | $13,045 |
| WISCONSIN | 0.0237188 | $17,680 | $17,680 |
| WYOMING | 0.0036105 | $2,691 | $2,691 |
| STATE TOTALS | 1.0000000 | $746,500 | $746,500 |
| GENERAL RESERVE | | | $38,500 |
| 100 UNDERSERVED COUNTIES/COLONIAS | | | $50,000 |
| SELF HELP | | | $150,000 |
| TARGETED | | | $15,000 |
| TOTAL | | | $1,000,000 |

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

| STATES | TOTAL FY1998 ALLOCATION | VERY LOW-INCOME ALLOCATION 40 PERCENT | LOW-INCOME ALLOCATION 60 PERCENT |
|---|---|---|---|
| ALABAMA | $19,923 | $7,969 | $11,954 |
| ALASKA | $4,112 | $1,645 | $2,467 |
| ARIZONA | $10,840 | $4,336 | $6,504 |
| ARKANSAS | $15,512 | $6,205 | $9,307 |
| CALIFORNIA | $33,902 | $13,561 | $20,341 |
| COLORADO | $6,840 | $2,736 | $4,104 |
| DELAWARE | $1,832 | $733 | $1,099 |
| MARYLAND | $8,597 | $3,439 | $5,158 |
| FLORIDA | $23,287 | $9,315 | $13,972 |
| GEORGIA | $27,922 | $11,169 | $16,753 |
| HAWAII | $5,009 | $2,004 | $3,005 |
| W PAC ISLANDS | $1,100 | $440 | $660 |
| IDAHO | $5,719 | $2,288 | $3,431 |
| ILLINOIS | $19,885 | $7,954 | $11,931 |
| INDIANA | $20,184 | $8,074 | $12,110 |
| IOWA | $12,185 | $4,874 | $7,311 |
| KANSAS | $9,494 | $3,798 | $5,696 |
| KENTUCKY | $21,530 | $8,612 | $12,918 |
| LOUISIANA | $18,390 | $7,356 | $11,034 |
| MAINE | $8,074 | $3,230 | $4,844 |
| MASSACHUSETTS | $8,186 | $3,274 | $4,912 |
| CONNECTICUT | $4,971 | $1,988 | $2,983 |
| RHODE ISLAND | $1,159 | $464 | $695 |
| MICHIGAN | $26,352 | $10,541 | $15,811 |
| MINNESOTA | $14,839 | $5,936 | $8,903 |
| MISSISSIPPI | $18,652 | $7,461 | $11,191 |
| MISSOURI | $18,839 | $7,536 | $11,303 |
| MONTANA | $4,747 | $1,899 | $2,848 |
| NEBRASKA | $6,466 | $2,586 | $3,880 |
| NEVADA | $2,131 | $852 | $1,279 |
| NEW JERSEY | $7,289 | $2,916 | $4,373 |
| NEW MEXICO | $8,223 | $3,289 | $4,934 |
| NEW YORK | $26,763 | $10,705 | $16,058 |
| NORTH CAROLINA | $36,108 | $14,443 | $21,665 |
| NORTH DAKOTA | $3,364 | $1,346 | $2,018 |
| OHIO | $29,080 | $11,632 | $17,448 |
| OKLAHOMA | $12,970 | $5,188 | $7,782 |
| OREGON | $11,550 | $4,620 | $6,930 |
| PENNSYLVANIA | $34,874 | $13,950 | $20,924 |
| PUERTO RICO | $17,867 | $7,147 | $10,720 |
| SOUTH CAROLINA | $19,250 | $7,700 | $11,550 |
| SOUTH DAKOTA | $4,672 | $1,869 | $2,803 |
| TENNESSEE | $21,754 | $8,702 | $13,052 |
| TEXAS | $49,226 | $19,690 | $29,536 |
| UTAH | $3,028 | $1,211 | $1,817 |
| VERMONT | $3,925 | $1,570 | $2,355 |
| NEW HAMPSHIRE | $5,420 | $2,168 | $3,252 |
| VIRGIN ISLANDS | $1,495 | $598 | $897 |
| VIRGINIA | $21,605 | $8,642 | $12,963 |
| WASHINGTON | $13,942 | $5,577 | $8,365 |
| WEST VIRGINIA | $13,045 | $5,218 | $7,827 |
| WISCONSIN | $17,680 | $7,072 | $10,608 |
| WYOMING | $2,691 | $1,076 | $1,615 |
| STATE TOTALS | $746,500 | $298,600 | $447,900 |
| GENERAL RESERVE | $38,500 | $15,400 | $23,100 |
| 100 COUNTIES/COLONIAS | $50,000 | $20,000 | $30,000 |
| SELF HELP | $150,000 | $60,000 | $90,000 |
| TARGETED | $15,000 | $6,000 | $9,000 |
| TOTAL | $1,000,000 | $400,000 | $600,000 |

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

| STATES | STATE BASIC FORMULA FACTOR | STATE BASIC FORMULA / ADMININSTATIVE ALLOCATION | TOTAL FY1998 ALLOCATION |
|---|---|---|---|
| ALABAMA | 0.0253847 | $62,167 | $62,167 |
| ALASKA | 0.0061561 | $15,076 | $15,076 |
| ARIZONA | 0.0155290 | $38,030 | $38,030 |
| ARKANSAS | 0.0213661 | $52,326 | $52,326 |
| CALIFORNIA | 0.0524861 | $128,538 | $128,539 |
| COLORADO | 0.0100701 | $24,662 | $24,662 |
| DELAWARE | 0.0024043 | $5,888 | $5,888 |
| MARYLAND | 0.0104750 | $25,653 | $25,653 |
| FLORIDA | 0.0308357 | $75,517 | $75,517 |
| GEORGIA | 0.0385293 | $94,358 | $94,358 |
| HAWAII | 0.0083323 | $20,406 | $20,406 |
| W PAC ISLANDS | N/A | $1,000 | $1,000 |
| IDAHO | 0.0077774 | $19,047 | $19,047 |
| ILLINOIS | 0.0256395 | $62,791 | $62,791 |
| INDIANA | 0.0236023 | $57,802 | $57,802 |
| IOWA | 0.0151422 | $37,083 | $37,083 |
| KANSAS | 0.0123032 | $30,131 | $30,131 |
| KENTUCKY | 0.0286790 | $70,235 | $70,235 |
| LOUISIANA | 0.0256223 | $62,749 | $62,749 |
| MAINE | 0.0113916 | $27,898 | $27,898 |
| MASSACHUSETTS | 0.0117468 | $28,768 | $28,768 |
| CONNECTICUT | 0.0065708 | $16,092 | $16,092 |
| RHODE ISLAND | 0.0017216 | $4,216 | $4,216 |
| MICHIGAN | 0.0337181 | $82,576 | $82,576 |
| MINNESOTA | 0.0184738 | $45,242 | $45,242 |
| MISSISSIPPI | 0.0259670 | $63,593 | $63,593 |
| MISSOURI | 0.0253687 | $62,128 | $62,128 |
| MONTANA | 0.0067138 | $16,442 | $16,442 |
| NEBRASKA | 0.0083216 | $20,380 | $20,380 |
| NEVADA | 0.0029735 | $7,282 | $7,282 |
| NEW JERSEY | 0.0091825 | $22,488 | $22,488 |
| NEW MEXICO | 0.0117200 | $28,702 | $28,702 |
| NEW YORK | 0.0369739 | $90,549 | $90,549 |
| NORTH CAROLINA | 0.0471742 | $115,530 | $115,530 |
| NORTH DAKOTA | 0.0040847 | $10,003 | $10,003 |
| OHIO | 0.0378081 | $92,592 | $92,592 |
| OKLAHOMA | 0.0175713 | $43,032 | $43,032 |
| OREGON | 0.0166212 | $40,705 | $40,705 |
| PENNSYLVANIA | 0.0438367 | $107,356 | $107,356 |
| PUERTO RICO | 0.0250931 | $61,453 | $61,453 |
| SOUTH CAROLINA | 0.0249510 | $61,105 | $61,105 |
| SOUTH DAKOTA | 0.0065435 | $16,025 | $16,025 |
| TENNESSEE | 0.0276859 | $67,803 | $67,803 |
| TEXAS | 0.0665018 | $162,863 | $162,863 |
| UTAH | 0.0039861 | $9,762 | $9,762 |
| VERMONT | 0.0057475 | $14,076 | $14,076 |
| NEW HAMPSHIRE | 0.0075234 | $18,425 | $18,425 |
| VIRGIN ISLANDS | 0.0027236 | $6,670 | $6,670 |
| VIRGINIA | 0.0278404 | $68,181 | $68,181 |
| WASHINGTON | 0.0200905 | $49,202 | $49,202 |
| WEST VIRGINIA | 0.0172518 | $42,250 | $42,250 |
| WISCONSIN | 0.0222867 | $54,580 | $54,580 |
| WYOMING | 0.0035006 | $8,573 | $8,573 |
| STATE TOTALS | 1.0000000 | $2,450,000 | $2,450,000 |
| GENERAL RESERVE | | | $450,000 |
| SET ASIDE FOR 502 REFINANCING | | | $100,000 |
| TOTAL | | | $3,000,000 |

[FR Doc. 97–33397 Filed 12–22–97; 8:45 am]
BILLING CODE 3410–XV–C

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program

**AGENCY:** Rural Housing Service (RHS), USDA.

**ACTION:** Notice.

**SUMMARY:** This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing loan funds and Section 521 Rental Assistance (RA) for new construction. This document also describes the allocation of loan funds and new construction rental assistance (RA), application process, submission requirements, and areas of special emphasis or consideration.

**DATES:** The closing deadline for receipt of applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State Office on March 23, 1998, except as noted. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

**ADDRESSES:** Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact can be found elsewhere in this Notice.

**FOR FURTHER INFORMATION CONTACT:** Most States will have a loan limit; therefore, applicants must contact the appropriate Rural Development State Office listed elsewhere in this Notice for funding availability. For general information, applicants may contact Linda Armour, Cynthia L. Reese-Foxworth, or Carl Wagner, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Programs Affected

The Rural Rental Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

#### Rural Development State Offices With 90-Day Application Deadlines

**Note:** Telephone numbers listed are not toll-free.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, Steve Langstaff

California State Office, 194 West Main Street, Suite F, Woodland, CA 95695–2915, (916) 668–2090, Robert P. Anderson

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, W. Arthur Greenwood

Florida and Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, and Western Pacific Areas State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3005, Abraham Kubo

Idaho State Office, 3232 Elder Street, Boise, ID 83705, (208) 378–5627, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3115, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (913) 271–2720, Gary Shumaker

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7950, Yvonne R. Emerson

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, and Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4327, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (515) 337–6635 (ext. 1609), Julie Putnam

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (612) 290–3912 Mary Ann Erickson

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, Marylou Falconer

Nebraska State Office, Federal Building, room 308, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5557, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5405, (702) 887–1222, Jackie J. Goodnough

New Hampshire—Served by Vermont State Office

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, Carmen N. Lopez

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, Kathy David

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 9724–2333, (503) 414–3350, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 782–4574, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (809) 766–5095 Ext. 256, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, Frances S. Kelley

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 5438, Salt Lake City, UT 84138, (801) 524–3242, Robert L. Milianta

Vermont and New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, Russell Higgins

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, Gayle Calhoun

Washington State Office,1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5717, (360) 704–7707, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, Sherry Engel

Wyoming State Office,100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, Charles E. Huff

**Rural Development State Offices With 60-Day Deadlines**

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, Ron Abbott

Arkansas State Office, 700 W. Capitol Ave., Rm. 5411, Little Rock, AR 72201–3225, (501) 324–6701, Cathy Jones

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), ''Sam'' Mitchell

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, George N. Von Pless

Oklahoma State Office,100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, Patsy Graumann

South Dakota State Office, Federal Building, Room 308, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, Dwight Wullweber

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, Eugene G. Pavlat

*Explanation of 60-Day NOFA Application Deadline*

Customers in the above listed States will benefit from having a 60-day application period so that the Agency's NOFA process will coincide with the time restraints placed upon them by participating lenders and State Housing Finance Agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds. State Housing Finance Agencies have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist our customers in obtaining leveraged funds and participate with other funding sources, a 60-day application period is provided.

**Discussion of Notice**

**I. Authority and Allocation**

*A. Authority*

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS the authority to make loans to any individual, corporation, association, trust, Indian tribe, public and private nonprofit organizations, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income as well as other persons and families of low income in rural areas. Rental assistance is a tenant subsidy available to very-low and low-income families residing in rural rental housing facilities with RHS financing, and is requested with application for such facilities.

*B. Allocation Methodology*

Based on the allocation formula contained in 7 CFR part 1940, subpart L ''Methodology and Formulas for Allocation of Loan and Grant Program Funds,'' RHS has allocated available funds directly to each Rural Development State Office.

The Rural Housing Service has published regulations outlining its application and review process for the Section 515 Rural Rental Housing new construction program. These regulations can be found at 7 CFR part 1944, subpart E, and provide that some prior year applicants who filed acceptable loan requests in prior years may proceed with their loan requests provided they comply with the aforementioned regulations. Additionally, in fiscal year 1998, some States have requested authorization to transfer all or a portion of their new construction allocation to their rehabilitation and repair allocation. States in this category need not wait until the NOFA deadline to obligate funds. Applicants are strongly advised to contact their State Office to ascertain its funding status. The following States have applications on hand from prior years in designated places that, if obligated, will use all of their direct allocations or may be transferring their new construction allocation to their rehabilitation and repair allocations:

Alabama, Colorado, Idaho, Illinois, Kentucky, Maine, Mississippi, North Dakota, Ohio, Tennessee, and Texas.

Other States also have applications on hand that may use part of their allocation for new construction or will use a portion of their new construction allocation for rehabilitation and repair purposes. Therefore, potential applicants are encouraged to apply in those States during the NOFA period; however, there is no guarantee that funds will be available. The Agency is not responsible for any costs associated with the applicant's decision to submit an application package. If funds are not available, those applications will not be reviewed and will be returned to the applicant.

Limited funds are available, at the National Office, to all States for eligible nonprofit organizations and to some States for the 100 most Underserved Counties and Colonias Set-asides. Accordingly, all potential applicants and interested parties must contact the appropriate Rural Development State Office to ascertain funding availability from the State's allocation and potential availability of funds from the set-asides for nonprofit organizations and underserved areas. Since funds are so limited, every effort must be made to ensure that RHS funds are leveraged with other financing sources to reach the most underserved areas. Available funds should be utilized in communities where economic growth can be stimulated via the construction of Multi-Family Housing complexes.

**II. Application Process**

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadlines previously mentioned, unless that date and time is extended by a Notice published in the **Federal Register**.

**III. Application Submission Requirements**

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that do not conform to or exceed the State's limit on size of project or dollar amount will be returned to the applicant); and

3. List of designated places for funding new section 515 facilities.

**IV. Areas of Special Emphasis or Consideration**

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National Office and one by the State Office, to support special initiatives at the National and State Office level. These initiatives will not be used this fiscal year. However, States are strongly encouraged to develop special initiatives for fiscal year 1999, as this criteria will be used.

B. The Agency has published elsewhere in this **Federal Register** a Notice which provides the availability of funds set-aside for Nonprofit entities and the 100 most Underserved Counties and Colonias (Cranston-Gonzalez Act). That Notice indicates that $9.45 million is available nationwide in a set-aside for eligible Nonprofit organizations and $5.25 million is available in a set-aside for the 100 most Underserved Counties and Colonias. That Notice also gives a deadline of February 23, 1998 as the last day for submission of applications for participation in the Nonprofit and Underserved Counties and Colonias Set-Asides.

C. The Agency has published elsewhere in this **Federal Register**, a Notice which provides the availability of funds set-aside for the State Rental Assistance Program. That Notice indicates that $2.5 million is available for States with viable State Rental Assistance Programs. In order to participate, States are to submit a written request with specific information about the State RA program, i.e., memorandum of understanding, documentation from the provider, etc., to the National Office no later than March 15, 1998.

D. In accordance with the Welfare and Immigrations Reform Act, States are reminded to inform potential applicants that modest community rooms in section 515 complexes are highly encouraged to provide a place for special activities and services that will aid residents in improving job skills, education, or their understanding of the impact of changes in Government programs as well as to provide a space for resident and community meetings.

E. Loan requests filed in response to this NOFA are subject to the regulatory provisions with respect to the Final Rule entitled ''Rural Rental Housing (RRH) Assistance,'' which is published elsewhere in this issue of the **Federal Register**.

Dated: December 16, 1997.

**Jan E. Shadburn,**

*Administrator, Rural Housing Service.*

[FR Doc. 97–33398 Filed 12–22–97; 8:45 am]

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Federal Register

Tuesday
December 23, 1997

## Part V

# Office of Personnel Management

**5 CFR Part 551**

**Pay Administration Under the Fair Labor Standards Act; Final Rule**

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 551**

**RIN 3206–AG70**

## Pay Administration Under the Fair Labor Standards Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) amends the pay administration under the Fair Labor Standards Act (referred to as ''the Act'' or ''FLSA'') rules. We made text clearer, standardized terms, changed to the active voice, reorganized material for added clarity, inserted or revised headings to reflect content accurately, reduced internal cross-referencing, corrected typographical, punctuation, and grammatical errors, and used ''plain English.'' We included guidance published in the sunsetted Federal Personnel Manual, added certain work in the computer software field to the professional exemption criteria, added an exemption for certain pilots, added the statutory exclusion of customs officers, and included regulations on child labor and claims and compliance.

**DATES:** Effective December 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, by telephone on 202–606–2990; by fax on 202–606–2663; or by e-mail at ADOMSOE@opm.gov.

**SUPPLEMENTARY INFORMATION:** We received 15 submissions:

1 was from an individual and was not a comment;
4 were from individuals;
5 were from 3 agencies (3 were from 1 agency);
4 were from 5 labor organizations (1 was submitted jointly by 2 labor organizations); and
1 was from the Office of Compliance in the Legislative Branch.

### General Comments

We inserted the word ''comparable'' after the word ''other'' in the phrase ''other white collar'' throughout the text to make the wording consistent.

An individual commended the clarity of the supplementary information introducing the proposed regulations as particularly intelligible.

Another individual suggested that the modified or added portions of the regulation published in the Code of Federal Regulations be shown in bold face. This cannot be done in the **Federal Register**. However, we will post on the OPM web site (www.opm.gov) a version of the final regulations in which changed or added material is shown in bold face. Individuals who do not have Internet access may request a copy by calling 202–606–2990 or by sending a request by e-mail to ADOMSOE@OPM.GOV.

One labor organization commented that it was not clear which portions of part 551 of title 5, Code of Federal Regulations, the proposed regulations amended. Subparts A and B are amended and subparts F and G are added. This final rule does not amend subparts C, D, or E.

The same labor organization pointed out that, in its opinion, many Federal employees are wrongfully denied FLSA overtime pay and recommended three guiding principles to address this problem.

First, an agency should not declare an employee to be exempt if there is reasonable doubt about whether an employee meets any exemption criteria.

Second, OPM's regulations should be designed to reduce ambiguity, thereby reducing the chances that agencies will incorrectly determine an employee to be FLSA exempt.

Third, OPM's regulations pertaining to exemptions should be consistent with the Department of Labor's administration of the Act and should not be susceptible to a more expansive interpretation than comparable Department of Labor regulations.

We believe the proposed regulations published on August 25, 1997, adequately addressed these concerns. Nonetheless, we kept these suggested principles in mind as we made revisions. For example, sections 551.201 and 551.202 in particular emphasize that an employee is presumed to be nonexempt unless the agency correctly determines that the work the employee performs clearly meets one or more of the exemption criteria.

Another labor organization asserted that the ''salary basis test'' that is included in the Department of Labor's FLSA regulations is applicable to Federal employees for whom OPM administers the Act.

The Department of Labor has determined that such tests do not apply to public employees (see section 541.5d of title 29, Code of Federal Regulations).

*1. Section 551.102—Authority and Administration*

The Office of Compliance in the Legislative Branch stated that OPM's description of its responsibilities was inaccurate in three respects.

First, the proposed regulations imply that the nine listed employing entities and their employees are covered by the FLSA. However, the employees of these entities are not included in the definition of ''employee'' under section 3(e)(2) of the Act. The Congressional Accountability Act of 1995 *extends the rights and protections* of the FLSA to the employees of these entities, so it is the Accountability Act, not the FLSA, that actually applies.

Second, the proposed regulations state that the Office of Compliance administers the law for the listed entities. However, while the Office of Compliance is assigned certain administrative responsibilities under the Accountability Act, that Act does not authorize the Office of Compliance to administer the law, as section 4(f) of the FLSA authorizes OPM to administer the FLSA.

Third, the proposed regulations refer to the Office of Technology Assessment. While it is included in the Accountability Act, the Office of Technology Assessment no longer exists and therefore should not be included in a description of the responsibilities of the Office of Compliance.

In response to these comments, we deleted the introductory language of proposed paragraph (d) and substituted in its place the language provided by the Office of Compliance to describe its responsibilities. We deleted proposed paragraph (d)(9) to omit mention of the Office of Technology Assessment.

*2. Section 551.103—Coverage*

An agency requested that the proposed regulations be amended to reflect that members of the Uniformed Services are not covered by the FLSA and ensuing regulations.

There are seven Uniformed Services. The four Uniformed Services that comprise the Military Departments include the United States Army, United States Navy, United States Marines, and the United States Air Force. Additionally, three of the Uniformed Services are in Executive Departments. The United States Coast Guard is in the Department of Transportation. The Commissioned Corps of the National Oceanic and Atmospheric Administration is in the Department of Commerce. The Commissioned Corps of the Public Health Service is in the Department of Health and Human Services.

Members of the Uniformed Services are not considered employees as defined in section 2105 of title 5, United States Code, or other statutes that address the pay, benefits, and duties of Federal employees. Further, officers of the

Uniformed Services are appointed by the President and, in many cases, by and with the consent of the Senate. The pay and benefits of members of the Uniformed Services are controlled by the provisions of title 37, United States Code.

Officers of the Uniformed Services are appointed to serve when and where needed to meet the needs of their respective Services. Therefore, rules regarding workweek requirements in the current and proposed regulations are inapplicable to members of all Uniformed Services.

We adopted the agency's recommendation. In proposed paragraph (a)(2), we inserted the words ''a civilian employee'' before the word ''appointed.'' To proposed paragraph (b), we added members of the Uniformed Services to the list of persons not covered by the Act. We revised proposed paragraph (b)(2) by deleting the ''or'' after the semicolon. We revised proposed paragraph (b)(3) by deleting the period and substituting a semicolon followed by ''or.''

*3. Section 551.104—Definition of Agency*

The Office of Compliance in the Legislative Branch suggested a revision of the definition of ''agency'' if OPM's final definition of ''agency'' includes a specific exclusion of the entities in the legislative branch whose employees are not covered under the FLSA.

The language is in keeping with the explanation of the responsibilities of the Office of Compliance discussed in item 1 and added to section 551.102(d), therefore, we adopted the revision.

*4. Section 551.104—Definition of Claim*

We added a sentence explaining that the term ''claim'' is used generically in subpart G to include complaints under the child labor provisions of the Act.

*5. Section 551.104—Definition of De Minimis Activity or Worktime*

One agency pointed out that section 785.47 of title 29, Code of Federal Regulations, requires an employer to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time the employee is regularly required to spend on assigned duties.

The two labor organizations pointed out that the actual amount of time involved is only one of three factors to be considered. The other two factors are the administrative difficulty of recording small amounts of time and whether the work is performed on a regular basis. In addition, one labor organization suggested that the definition be clarified to mean fewer than a total of ten minutes in the entire workday. The same labor organization stated that some agencies have argued that if an employee performs a work activity for a period of fewer than 10 minutes at the beginning of a workday and fewer than 10 minutes at the end of a workday, the *de minimis* doctrine can be applied even though the total combined time for the employee exceeds 10 minutes for the day. This labor organization outlined the three factors discussed by the court in *Lindow* v. *U.S.*, 738 F.2d 1057 (9th Cir. 1984).

In view of these comments, we deleted the proposed definition of *de minimis activity or worktime*. We may address the term at a later time.

*6. Section 551.104—Definition of Discretion and Independent Judgment*

One labor organization stated that the proposed definition appears to require less than is required under the Department of Labor's regulations and suggested that the definition be made more similar to the Department of Labor regulation at section 541.207(a) of title 29, Code of Federal Regulations. The labor organization also suggested that we add to proposed paragraph (3) the following sentence: ''The discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence.''

After carefully weighing this comment against the need for OPM to apply the letter and spirit of the Act in a public sector context, we decided not to revise the proposed definition. Our proposed definition acknowledges that in the public sector, with its responsibility and accountability to the general public, levels of review are frequently required. We believe that paragraph (3) of the definition, which states that decisions made independently must be significant and then amplifies what ''significant'' includes versus what it does not extend to, adequately addresses the commentor's concerns.

*7. Section 551.104—Definition of Employee*

The agency which in item 2 pointed out that members of the Uniformed Services are not covered by the FLSA recommended a change to the definition of employee to reflect this.

We adopted the recommendation. In proposed paragraph (1) of the definition of employee, we inserted the phrase ''as a civilian'' before the phrase ''in an executive agency.''

One individual and one agency pointed out that the definition of employee should include the Government Printing Office. The Congressional Accountability Act of 1995, Pub. L. 104–1, amended the FLSA at section 203(e)(2)(A) of title 29, United States Code, by deleting the reference to ''unit[s]'' in the legislative branch in clause (iii) and by adding a new clause (vi) identifying the Government Printing Office as a public agency whose employees are covered by the FLSA.

OPM's proposed regulations tracked the law's deletion, but not the addition. This omission was unintentional. We revised the definition of employee by deleting the ''or'' following proposed paragraph (3), substituting a semicolon and the word ''or'' for the period following proposed paragraph (4), and adding paragraph (5) naming the Government Printing Office.

*8. Section 551.104—Definition of Hours of Work*

One labor organization suggested that the definition of hours of work should state that all interpretations of the FLSA, including Comptroller General decisions, OPM guidance, and agency policy and regulations, must be consistent with the Act and Department of Labor regulations in order to be valid.

OPM is tasked with administering the Act consistent with the Department of Labor. Our regulations accomplish this. Therefore, we did not find it necessary to adopt this suggestion.

*9. Section 551.104—Definition of Management or General Business Function or Supporting Service*

We revised the first sentence of proposed paragraph (2) of the definition by deleting the words ''general management, business, or servicing functions'' and substituting in their place the words ''management or general business functions or supporting services'' to be consistent with wording elsewhere.

Two labor organizations contended that the proposed definition fails to clearly explain the type of work which falls under the administrative exemption.

One labor organization pointed out that the Department of Labor regulation at § 541.205(a) of title 29, Code of Federal Regulations, clearly distinguishes between work involving the administrative operations of an employer—which is exempt work—and ''production'' work which involves performing activities that carry out the day-to-day functions of the employer—which is nonexempt work.

The other labor organization suggested that to clarify the definition of *management or general business function or supporting service* and make it consistent with law, the following statement should be added: ''Employees who perform the day-to-day activities necessary for an agency to accomplish its mission do not qualify as performing 'management or general business functions or supporting services.'

We believe the proposed definition is legally correct.

*10. Section 551.104—Definition of Supervisory and Closely Related Work*

One labor organization stated that the paragraph (2) of the proposed definition of *supervisory and closely related work* is far more expansive than the Department of Labor regulation and perhaps more expansive than OPM intended. The labor organization suggested that we add the phrase ''closely related work'' to the definitions and adopt the definition used by the Department of Labor in § 541.108 of title 29, Code of Federal Regulations.

We believe the proposed definition is legally correct.

*11. Section 551.104—Definition of Temporary Work or Duties*

We had an inquiry from an agency personnelist who explained that the agency in question has a number of exempt employees whose official position descriptions include minor, nonexempt duties. The agency has correctly determined that the employees are exempt. The employees, however, are being required to perform the nonexempt work included in the official position description for a greater percentage of the time and on a long-term, but temporary, basis. Under our proposed regulations, the agency could argue that the work is not ''not consistent with the employee's official position description.''

We revised the definition by inserting the words ''the primary or grade-controlling duty of'' before the words ''the employee's official position description.'' We made conforming changes throughout § 551.208.

*12. Section 551.201—Agency Authority*

Two labor organizations commented on this section.

One labor organization suggested replacing the phrase ''makes a determination'' with ''properly determines'' to make it clear that the presumption of FLSA coverage can be rebutted only by a proper or correct determination that the exemption criteria have been met.

We adopted the suggestion. We revised the first sentence of proposed paragraph 551.201 by deleting ''All employees are'' and substituting ''Each employee is,'' deleting ''makes a determination'' and substituting ''correctly determines,'' deleting ''position'' and substituting ''employee clearly,'' and adding ''and such supplemental interpretations or instructions issued by OPM'' after ''subpart.'' The word ''clearly'' is used to make this principle consistent with those expressed in proposed paragraphs 551.202 (a) and (b). The sentence was then moved to § 551.202 as new paragraph (a).

The other labor organization stated that agencies do not need to be told to exempt employees because they already do so more often than is justified. The labor organization recommended that the second sentence in this section be deleted, or modified by inserting the word ''clearly'' in the phrase ''any employee who meets * * *'' to be consistent with proposed paragraphs (a) and (c) of § 551.202 which already use the word.

In this instance, we did not adopt the suggestion to use the word ''clearly.'' Instead, we modified the sentence to better reflect an agency's authority to designate an employee FLSA exempt. We revised the second sentence in proposed § 551.201 by deleting ''must exempt from the overtime provisions of the Act any employee who'' and substituting ''may designate an employee FLSA exempt only when the agency correctly determines that the employee,'' and inserting ''one or more of'' after ''meets.''

*13. Section 551.202—General Principles Governing Exemptions*

As mentioned in item 12, we revised the first sentence of proposed § 551.201 and added it as the first general principle under § 551.202. Accordingly, we redesignated proposed paragraphs (a) through (h) as paragraphs (b) through (i).

We revised the first sentence of proposed paragraph (c) (redesignated paragraph (d)) by deleting the words ''All employees who clearly meet'' and substituting ''An employee who clearly meets.''

One labor organization commented on proposed paragraph (d)(2) (redesignated paragraph (e)(2)). It is the labor organization's opinion that all nonsupervisory employees performing technician work who are not performing predominantly administrative functions are nonexempt, regardless of their grade level. The labor organization suggests that this paragraph be revised to state that all employees performing technician work are nonexempt.

Another labor organization commented on proposed paragraph (f) (redesignated paragraph (g)). The labor organization suggested that the example in the second sentence be changed because it has led agencies to incorrectly designate technicians as FLSA exempt when they should be FLSA nonexempt.

We did not adopt either suggestion. OPM has found that many higher-graded technical employees perform work fully comparable to work performed by professional engineers, particularly in the area of difficult, demanding, and original equipment and facilities design. Such employees are correctly determined to be FLSA exempt.

One individual stated that proposed paragraph (d)(3) (redesignated (e)(3)) concerning FLSA nonexempt status of employees in the Aircraft Operation, GS–2181, series is inconsistent with other OPM guidance in the ''Classifier's Handbook,'' ''Introduction to the Position Classification Standards,'' and the ''Guide to Personnel Data Standards.'' The individual pointed out that Appendix 1 of the ''Introduction to the Position Classification Standards'' lists the GS–2181 series as a series for which a two-grade interval pattern is normal and the GS–2181 classification standard indicates that this series is two-grade interval in a footnote. The individual expressed the opinion that if a position is considered to be technical and its occupational category is designated as technical, the position should not be identified as a two-grade interval series. The individual suggested that the GS–2181 position classification standard and Appendix 1 of ''The Introduction to the Position Classification Standards'' be revised to delete references to the GS–2181 series as two-grade interval.

Because this comment addressed classification, rather than FLSA, issues, we referred this comment to OPM's Office of Classification.

We revised the third sentence of proposed paragraph (g) (redesignated paragraph (h)) by deleting the phrase ''exempting the employee'' and substituting ''designating an employee FLSA exempt'' to be consistent with wording elsewhere.

*14. Section 551.204(a)—Exemption of Federal Wage System Employees*

We revised proposed paragraphs (a) and (b) by deleting the word ''under'' and substituting ''in'' to be consistent with § 551.203.

*15. Section 551.205—Executive Exemption Criteria*

Two labor organizations stated that it is a mistake to eliminate the requirement that in order to qualify under the executive exemption an employee must customarily and regularly direct the work of at least three subordinate employees. The labor organizations argued that agencies frequently classify employees who serve as lead workers as exempt under the executive exemption criteria and that the numerical requirement helps to clarify that employees who perform minimal supervisory duties do not fall under this exemption. They predict that agencies will claim the individual employees who work with other employees and who make recommendations regarding their work will qualify for the executive exemption simply if the employees exercise some independence in their own work. They state that this may arise if employees work in teams and have no direct supervisory authority over team members but instead one of the team members acts as a team leader. Even if the team leader assignment is rotated among members of the team, an agency may, under the proposed regulation, claim that the employee meets the executive exemption criteria. The labor organizations also stated that the numerical requirement is consistent with the Department of Labor regulations.

We did not adopt this suggestion. The original numerical requirement of at least three subordinate employees was based on the Supervisory Grade Evaluation Guide. That guide was replaced by the General Schedule Supervisory Guide which does not have a numerical requirement. We also recognized that OPM's requirement of three or more subordinate employees was inconsistent with Department of Labor's regulations. Instead of changing to an arbitrary number, we chose to use the plural ''employees'' which implies ''two or more.''

*16. Section 551.206—Administrative Exemption Criteria*

One agency commented that the criterion in proposed paragraph (a)(1) under the primary duty test could lead to an incorrect and overly broad application of the exemption and be inconsistent with Department of Labor's application of the Act to the private sector.

This comment addresses a well-established provision in the currently published regulations. Our experience is that the provision as currently published is sufficient.

We revised proposed paragraph (a)(2) by deleting the phrase ''general management or business functions'' and substituting in its place ''management or general business functions'' to be consistent with wording elsewhere.

We revised the headings of proposed paragraphs (b) and (c) by inserting the word ''test'' before the periods.

*17. Section 551.207—Professional Exemption Criteria*

Several commentors pointed out that proposed paragraph(a)(3) is more expansive than the law pertaining to employees in the computer software field (Public Law 101–583, 104 Stat. 2871, November 15, 1990).

One labor organization suggested that in order to clarify the limited scope of the exemption for work in computer-related occupations, OPM's proposed regulations should include a provision similar to § 541.303(c) of title 29, Code of Federal Regulations which provides that the professional exemption only applies to highly skilled employees who have achieved a level of proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering.

The same labor organization also suggested that the proposed regulation should also include a provision analogous to § 541.303(d) of title 29, Code of Federal Regulations, which provides that the exemption does not include ''employees engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment'' or employees whose work is dependent on computers but who do not work in computer systems analysis or computer programming occupations.

The labor organization further suggested that the exemption does not include employees engaged in the operation of computers or in the manufacture of computer hardware and related equipment, or employees whose work is dependent on computers but who do not work in computer systems analysis or computer programming occupations.

Public Law 101–583 (104 Stat. 2871, November 15, 1990) provides that employees performing such work may be designated FLSA exempt as executive, administrative, or professional employees. The law also states that ''if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage . . . .'' Section 13(a) of the Act was amended to read ''in the case of an employee who is compensated on an hourly basis, is compensated at a rate not less than $27.63 an hour.'' Proposed paragraph (a)(3) essentially restates the criteria in section 213(a)(17) of title 29, United States Code, for exempting from the FLSA certain employees who work with computers. The regulation does not include a salary-based test because the Department of Labor has determined that such tests do not apply to public employees (see § 541.5d of title 29, Code of Federal Regulations).

Commentors suggested that we further explain the scope of this exemption. We considered this suggestion, but concluded that the language in the proposed regulation is sufficient.

The citation in proposed paragraph (a)(3)(iv) was published as ''(a)(3)(i), (3)(ii), and (3)(iii).'' We revised the citation to read ''(a)(3)(i), (a)(3)(ii), and (a)(3)(iii)'' to be consistent with the citation in proposed paragraph 551.208(d)(2) which reads ''(d)(2)(i) and (d)(2)(ii).

We revised the heading of proposed paragraph (b) by deleting the words ''in nature'' and substituting in their place the words ''work test.''

We revised the heading of proposed paragraph (c) by inserting the word ''test'' before the period.

*18. Section 551.208—Effect of Performing Temporary Work or Duties on FLSA Exemption Status*

As explained in item 11, we inserted the words ''the primary or grade-controlling duty of'' in proposed paragraphs (a)(1), (b)(1), (c)(1), and (c)(3).

To avoid any possible confusion on the part of agencies or employees, we inserted the word ''calendar'' before the word ''days'' in proposed paragraphs (b)(1)(i), (b)(2)(ii), (c)(1)(i) and (c)(2)(ii).

One labor organization took issue with proposed paragraphs (b)(1)(i) and (b)(2)(i) which state that the period of temporary work or duties must exceed 30 days (now referred to as the ''30-day test''). The labor organization incorrectly believed the OPM was ignoring the workweek basis of the FLSA and suggested that OPM should provide that exemption determinations be made on a workweek basis for temporary assignments of 5 workdays or more. We did not adopt the suggestion.

We believe that this suggestion, if adopted, would place an extreme administrative burden on agencies. The Act takes a single workweek as its standard, that is, a workweek is the unit of time used as the basis for applying

overtime standards under the Act. It would be administratively burdensome for Federal agencies to have to make this determination each week. OPM adopted the 30-day test to ease this administrative burden on agencies but the weekly standard still applies for pay purposes. The 30-day test is well established and has been unchanged in regulation since January 1988. The revision of this section makes clear to agencies and employees agencies' responsibilities regarding an employee who must temporarily perform work or duties that are not consistent with the *primary or grade-controlling duty* of the employee's official position description.

In the heading of proposed paragraph (b)(1)(iii), we made the word ''situations'' singular to parallel proposed paragraph (c)(1)(iii).

In proposed paragraph (c)(1)(ii), we added the words ''or duty'' to the paragraph heading to parallel paragraph (b)(1)(ii).

We italicized the heading of proposed paragraph (c)(3).

*19. Section 551.209—Foreign Exemption Criteria*

In proposed paragraph (a), we italicized the words ''all'' and ''any.''

We changed the period at the end of the introductory language of proposed paragraph (b) to a colon.

*20. Section 551.211—Statutory Exclusion*

One labor organization pointed out that the statutory exclusion in proposed § 551.211 goes beyond the statutory provision on which it is based. The Customs Officers Pay Reform Act (Customs Pay Act), codified at section 267 of title 19, United States Code (U.S.C.), provides that ''a customs officer who receives overtime pay under subsection (a) of this section or premium pay under subsection (b) of this section for time worked may not receive pay or other compensation *for that work* under any other provision of law.'' (Emphasis added.) Under the statute, a customs officer cannot receive FLSA overtime pay for the same work for which the officer received overtime pay or premium pay under the Customs Pay Act. Proposed section 551.211 goes beyond the statute because it completely excludes customs officers from the overtime pay and hours of work provisions of the FLSA. The labor organization stated that there are a number of circumstances in which the Customs Pay Act does not provide overtime pay for particular work but the FLSA does. For example, under section 267(a)(1) of the Customs Pay Reform Act, an employee is entitled to overtime pay only when he or she is ''officially assigned to perform work.'' Unlike the FLSA, the Customs Pay Act does not provide overtime pay for work that an employee is suffered or permitted to perform. The labor organization further stated that the United States Customs Service has taken the position that the Customs Pay Act does not authorize overtime pay for training, even when such training is required by the agency. It is Customs' position that training is not ''work'' under section 267(a)(1). According to Customs, training time is compensable only for employees who are FLSA covered. Customs has also taken the position that certain travel time is not compensable under the Customs Pay Act. The FLSA, however, provides compensation for some travel time and for time spent in training when required by the agency (see section 410.402(d) of title 5, Code of Federal Regulations). The labor organization pointed out that the Customs Pay Act does not exclude customs officers from compensation for these hours under the FLSA.

We revised proposed § 551.211 by quoting the Customs Pay Act. We deleted the first sentence and in its place is substituted ''A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of section 267 of title 19, United States Code, for time worked may not receive pay or other compensation for that work under any other provision of law.'' We revised the second sentence by deleting ''a customs inspector,'' inserting ''a United States Customs Service'' before ''supervisory,'' inserting ''or nonsupervisory'' after supervisory, deleting ''a canine enforcement officer'' before ''supervisory,'' and inserting ''or nonsupervisory'' after ''supervisory.''

*21. Section 551.601—Minimum Age Standards*

One agency suggested that the reference to section 3(l) in proposed paragraphs (a) and (b) be corrected to substitute a lower-case letter L for the Arabic numeral one inside the parentheses. We made this correction.

*22. Section 551.602—Responsibilities*

One agency suggested that it would be helpful to Federal agencies to provide a citation to the Department of Labor's child labor regulations.

We agree. We revised the first sentence of proposed paragraph (a) by inserting ''in part 570 of title 29, Code of Federal Regulations,'' before the phrase ''by the Secretary of Labor.''

One agency noted the reference to ''claims'' in subpart F and the inclusion of child labor ''claims'' in subpart G. The agency stated that this seems somewhat anomalous in that the enforcement mechanism for the child labor provisions of the FLSA is the assessment of civil money penalties pursuant to section 261(e) of title 29, United States Code, payable to the Federal Government by violating employers. This is in contrast to the assertion of wage claims under sections 16(b) and 16(c) of the FLSA by the Administrator or by an employee, resulting in the possible payment of back wages and liquidated damages to the employee.

We revised proposed paragraph (b) by deleting the word ''claims'' and substituting in its place the word ''complaints'' and we made conforming changes in §§ 551.701(a) and 551.702(a).

*23. Section 551.701—Applicability*

We revised proposed paragraph (a) by deleting the word ''claims'' from the phrase ''claims arising under the child labor provision'' and substituting the word ''complaints'' in its place. As explained in item 4, the term ''claim'' is used generically in subpart G to include complaints under the child labor provisions of the Act.

*24. Section 551.702—Time Limits*

We revised the first sentence of proposed paragraph (a) by deleting the words ''may file an FLSA claim at any time'' and substituting in their place the words ''may at any time file a complaint'' and inserting the words ''an FLSA claim'' before the word ''challenging.''

One labor organization argued that the applicable statute of limitations continues to be 6 years under the Barring Act (section 3702(b)(1) of title 31, United States Code), notwithstanding the enactment of Pub. L. 104–52 (109 Stat. 468–69 (1995)) and the decision in *Adams* v. *Bowsher,* 946 F.Supp. 37 (D.C.D.C. 1996).

It is OPM's position that the law and court decision established a 2-year statute of limitations (3-year for willful violations).

Another labor organization noted that proposed paragraph (c) permits a claimant to file a claim either with the agency employing the claimant during the claim period or with OPM. The labor organization stated that there should be a provision allowing the claimant the option to file the claim with OPM to resolve the claim if the agency fails to issue a decision on a claim filed with it within six months. This would preclude an agency from preventing an employee from receiving

compensation by simply refusing to process the claim.

We did not adopt this suggestion. Nothing in OPM's regulations precludes an employee from withdrawing a claim submitted to an agency and submitting the claim to OPM, if the employee believes the agency is taking too long to decide the claim.

*25. Section 551.703—Avenues of Review*

Two labor organizations noted that proposed paragraph (a) means that a claimant who is covered by a collective bargaining agreement that does not exclude FLSA matters for only part of a claim period, the claimant would be precluded from filing a claim with OPM for the period of time that the claimant was not covered by the agreement. The labor organizations suggested that the paragraph be rewritten to state that a claimant is limited to using the negotiated grievance procedure as the exclusive administrative remedy for only time periods in which he or she was a member of a bargaining unit and covered by a collective bargaining agreement which did not exclude FLSA matters.

We did not adopt the suggestion for two reasons. First, *Carter* v. *Gibbs,* 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied,* 111 S.Ct. 46 (1990), established the principle that the negotiated grievance procedure is the only administrative avenue open to an employee covered by a collective bargaining agreement that does not exclude FLSA matters. Second, if a claimant were permitted to split the claim period between two avenues of review, different and conflicting decisions might be reached, neither binding on the other.

We revised the introductory language of proposed paragraph (b) by inserting the phrase ''but not both simultaneously'' before the word ''regarding'' to make it clear that an employee may not file the same claim with the agency and OPM simultaneously.

One labor organization stated that the regulations should make it clear that employees have a right to proceed to court with FLSA claims independently of their right to file a claim with OPM.

Proposed paragraph (c) states that nothing in subpart G limits the right of a claimant to bring an action in an appropriate United States court, and that OPM will not decide an FLSA claim that is in litigation. We believe the proposed paragraph is sufficient.

The same labor organization suggested that employees should be advised that the filing of a claim with OPM or an agency will not toll the statute of limitations governing FLSA claims filed in court.

We agree that this would be helpful to employees and added such language as the second sentence of proposed paragraph (c).

*26. Section 551.704—Claimant's Representative.*

Two labor organizations interpreted the third sentence of the introductory language to proposed § 551.704 (which states ''A representative has no right to participate in OPM fact-finding'') to mean that a claimant would be limited to self-representation and pointed out that this conflicts with the first sentence which permits the designation of a representative to assist in preparing or presenting a claim.

We intended to make the point that an employee representative may not be present or listen in on fact-finding interviews conducted by OPM as a matter of right. Rather OPM, at its discretion, may invite the employee representative to participate. We revised the sentence in question to make this clear.

*27. Section 551.705—Form and Content of an FLSA Claim.*

We deleted the heading of proposed section 551.705 and substituted in its place the heading ''Filing an FLSA claim.''

One individual remarked that according to proposed paragraph (a) ''a non-unit employee can file an FLSA claim with the agency, and the agency can either adjudicate it or forward it to OPM without taking any action.''

This is not what we intended. Therefore, we have revised the second sentence by deleting the phrase ''At the discretion of the agency'' and substituting ''At the request of the claimant.''

The individual also asked whether an employee may appeal to OPM if the agency adjudicates the claim.

We redesignated proposed paragraphs (a) and (b) as (b) and (c) and added new paragraph (a) which states that an employee may file a claim with either the agency or with OPM, but may not pursue the same claim simultaneously with the agency and OPM. We encourage, but do not require, claimants to obtain decisions on claims from their agency before filing a claim with OPM. We also explain that a claimant may file a claim with OPM after receiving an unfavorable decision from the agency but may not file a claim with the agency after getting an unfavorable decision from OPM.

Regarding the requirement in proposed paragraph (b)(7) (redesignated as paragraph(c)(7)) that a claim must include evidence that the claim period was preserved, one labor organization pointed out that claimants may not realize the importance of retaining such documentation. The labor organization recommended that the regulation include a statement that if the claimant does not have evidence showing the claim was filed, proof may be provided by documents in agency records.

We did not adopt this recommendation. Proposed paragraph 551.702(c) states clearly that the claimant is responsible for proving when the claim was received by the agency or OPM and that the claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. The last sentence in proposed paragraph 551.702(c) explains why such documentation is important, that is, if a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back from the date the claim was received. Further, proposed paragraphs 551.709(a) and (b) provide for the release of information from an FLSA claim file to the parties concerned, that is, the claimant, any representative designated in writing by the claimant, and any representative of the agency or OPM involved in the proceeding. Thus, the claimant or the claimant's representative can obtain documents regarding the claim, including documentation of when the claim was received by the agency or OPM.

One labor organization suggested that in cases where the employee filed with an agency but withdrew the claim and submitted it to OPM, the date the claim was filed with the agency should be the relevant date for determining back pay.

This provision already exists in proposed paragraph (b)(7) (redesignated as paragraph (c)(7)).

*28. Sections 551.706—Responsibilities*

Two labor organizations argued that the time limit of 15 workdays in proposed paragraph (a)(1) is too restrictive. One of the labor organizations objected to the claimant being subject to a penalty (denial of the claim) if requested information is not received by OPM within 15 workdays without a corresponding penalty for the agency should the agency not provide requested information to OPM within 15 workdays. The labor organization pointed out that claimants may not realize that they need to request an

extension if they need more time to provide requested information.

We revised the first sentence of proposed paragraph (a)(1) by inserting ''the claimant or the claimant's representative requests additional time and'' after ''unless.'' We made corresponding changes in proposed § 551.707.

We revised the fourth sentence of proposed paragraph (a)(1) and the last sentence of proposed paragraph (b) by deleting the word ''denied'' and substituting in its place the word ''cancelled'' to be consistent with changes we made to proposed § 551.707.

One labor organization reasoned that much of the information necessary to support a claim is in the exclusive control of the agency. The labor organization suggested that OPM add a statement that upon request, and subject to any Privacy Act restrictions, agencies will provide a claimant with information relevant to the claimant's claim.

We agree that this would further impress upon agencies their responsibilities in FLSA claims and have added a such a statement as a new paragraph (b)(3). We redesignated proposed paragraph (b)(3) as paragraph (b)(4).

We revised proposed paragraph (b)(3) (redesignated as paragraph (b)(4)) by inserting the words ''the agency requests additional time and'' after the word ''unless'' to be consistent with wording elsewhere.

*29. Section 551.707—Withdrawal or Denial of an FLSA Claim*

We revised the section heading by deleting ''denial'' and substituting ''cancellation'' and revised proposed paragraph (b) by deleting ''denied'' and ''deny'' and substituting ''cancelled'' and ''cancel'' and inserting ''the claimant or the claimant's representative requests additional time and'' before ''OPM.'' With these changes, we believe the regulation states clearly enough that a claimant or claimant's representative can avoid cancellation of a claim by requesting and receiving an extension. Proposed paragraph (b) also states that a cancelled claim may be reconsidered by OPM if the claim shows that circumstances beyond the claimant's control prevented pursuit of the claim.

*30. Section 551.708—Finality and Effect of OPM FLSA Claim Decision*

One labor organization stated that the proposed regulations do not address the right of appeal from OPM FLSA claim determinations and suggests that the regulations should do so.

Proposed § 551.708 states that OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision.

*31. Section 551.709—Availability of Information*

We added the words ''before disclosing the information contained in an FLSA claim file to the parties concerned'' to the end of the second sentence in proposed paragraph (b) to make clear that this sanitized information being released only to the parties concerned with the claim.

*32. Section 551.710*

Under the address of the OPM Washington, DC Oversight Division, the District of Columbia is indented.

**Regulatory Flexibility Act**

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

**List of Subjects in 5 CFR Part 551**

Government employees, Wages.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 551 as follows:

1. The title and authority citation for part 551 continues to read as follows:

## PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

**Authority:** 5 U.S.C. 5542(c); Sec. 4(f) of the *Fair Labor Standards Act of 1938*, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

2. Subpart A is revised to read as follows:

## Subpart A—General Provisions

Sec.



### § 551.101 General.

(a) The Fair Labor Standards Act of 1938, as amended (referred to as ''the Act'' or ''FLSA''), provides for minimum standards for both wages and overtime entitlement, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

### § 551.102 Authority and administration.

(a) *Office of Personnel Management.* Section 3(e)(2) of the Act authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act. OPM is the administrator of the provisions of the Act with respect to any person employed by an agency, except as specified in paragraphs (b), (c), and (d) of this section.

(b) The *Equal Employment Opportunity Commission* administers the equal pay provisions contained in section 6(d) of the Act.

(c) The *Department of Labor* administers the Act for the following United States Government entities:

(1) The Library of Congress;

(2) The United States Postal Service;

(3) The Postal Rate Commission; and

(4) The Tennessee Valley Authority.

(d) *Office of Compliance.* The Congressional Accountability Act of 1995, as amended, sections 1301 *et seq.* of title 2, United States Code, extends rights and protections of the FLSA to employees of the following United States Government entities, and assigns certain administrative responsibilities to the Office of Compliance:

(1) The United States House of Representatives;

(2) The United States Senate;:

(3) The Capitol Guide Service;

(4) The Capitol Police;

(5) The Congressional Budget Office;

(6) The Office of the Architect of the Capitol;

(7) The Office of the Attending Physician; and

(8) The Office of Compliance.

### § 551.103 Coverage.

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is—

(1) Defined as an employee in section 2105 of title 5, United States Code;

(2) A civilian employee appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;

(2) A trainee;

(3) A volunteer; or

(4) A member of the Uniformed Services.

**§ 551.104 Definitions.**

In this part—

*Act* or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

*Administrative employee* means an employee who meets the criteria in § 551.206.

*Agency*, for purposes of OPM's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102(c) for which the Department of Labor administers the Act or § 551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

*Claim* means a written allegation from a current or former employee concerning his or her FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term ''claim'' is used generically in subpart G of this part to include complaints under the child labor provisions of the Act.

*Claim period* means the time during which the cause or basis of the claim occurred.

*Claimant* means a current or former employee who files an FLSA claim.

*Customarily and regularly* means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in § 551.205(a)(2) will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

*Discretion and independent judgment* means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The ''decisions'' made as a result of the exercise of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.

(2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.

(3) The decisions made independently must be significant. The term ''significant'' is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, the term does not extend to the kinds of decisions that affect only the procedural details of the employee's own work, or to such matters as deciding whether a situation does or does not conform to clearly applicable criteria.

*Emergency* means a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency.

*Employ* means to engage a person in an activity that is for the benefit of an agency, and includes any hours of work that are suffered or permitted.

*Employee* means a person who is employed—

(1) As a civilian in an executive agency as defined in section 105 of title 5, United States Code;

(2) As a civilian in a military department as defined in section 102 of title 5, United States Code;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department;

(4) In a unit of the judicial branch of the Government that has positions in the competitive service; or

(5) The Government Printing Office.

*Employer*, as defined in section 3(d) of the Act, means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

*Essential part of administrative or professional functions* means work that is included as an integral part of administrative or professional exempt work. This work is identified by examining the processes involved in performing the exempt function. For example, the processes involved in evaluating a body of information include collecting and organizing information; analyzing, evaluating, and developing conclusions; and frequently, preparing a record of findings and conclusions. Often collecting or compiling information and preparing reports or other records, if divorced from the evaluative function, are nonexempt tasks. When an employee who performs the evaluative functions also performs some or all of these related steps, all such work (for example, collecting background information, recording test results, tabulating data, or typing reports) is included in the employee's exempt duties.

*Executive employee* means an employee who meets the criteria in § 551.205.

Exempt area means any foreign country, or any territory under the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Midway Atoll;

(9) Wake Island;

(10) Johnston Island; and

(11) Palmyra.

*FLSA exempt* means not covered by the minimum wage and overtime provisions of the Act.

*FLSA exemption status* means an employee's designation by the employing agency as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

*FLSA exemption status determination claim* means a claim from a current or former employee challenging the correctness of his or her FLSA exemption status determination.

*FLSA nonexempt* means covered by the minimum wage and overtime provisions of the Act.

*FLSA overtime pay,* for the purpose of § 551.208, means overtime pay under this part.

*FLSA pay claim* means a claim from a current or former employee concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act.

*Foreign exemption* means a provision of the Act under which the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area.

*Formulation or execution of management programs or policies* means work that involves management programs and policies which range from broad national goals expressed in statutes or Executive orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly, through developing or recommending proposals that are acted on by others. Employees significantly affect the execution of management programs or policies typically when the work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations furthering the operation of programs and accomplishment of program objectives. Administrative employees engaged in such work typically perform one or more phases of program management (that is, planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls).

*Hours of work* means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purposes of determining overtime pay under subpart D of this subpart. Section 551.401 of subpart D further explains this term. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of this subpart, provisions of law, Comptroller General decisions, OPM policy guidance, agency policy and regulations, negotiated agreements, the rules in part 550 of this chapter (for hours of work for travel), and the rules in part 410 of this chapter (for hours of work for training).

*Management or general business function or supporting service,* as distinguished from production functions, means the work of employees who provide support to line managers.

(1) These employees furnish such support by—

(i) Providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts;

(ii) Assuming facets of the overall management function, such as safety management, personnel management, or budgeting and financial management;

(iii) Representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments; or

(iv) Providing supporting services, such as automated data processing, communications, or procurement and distribution of supplies.

(2) Neither the organizational location nor the number of employees performing identical or similar work changes management or general business functions or supporting services into production functions. The work, however, must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced.

*Nonexempt area* means any of the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Midway Atoll;

(9) Wake Island;

(10) Johnston Island; and

(11) Palmyra.

*Participation in the executive or administrative functions of a management official* means the participation of employees, variously identified as secretaries, administrative or executive assistants, aides, etc., in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such employees must be delegated and exercise substantial authority to act for the supervisor in the absence of specific instructions or procedures, and take actions which significantly affect the supervisor's effectiveness.

*Perform work in connection with an emergency* means to perform work that is directly related to resolving or coping with an emergency, or its immediate aftermath, as determined by the employing agency.

*Preserve the claim period* means to establish the period of possible entitlement to back pay by filing a written claim with either the agency employing the claimant during the claim period or with OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay.

*Primary duty* typically means the duty that constitutes the major part (over 50 percent) of an employee's work. A duty constituting less than 50 percent of the work may be credited as the primary duty for exemption purposes provided that duty—

(1) Constitutes a substantial, regular part of a position;

(2) Governs the classification and qualification requirements of the position; and

(3) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

*Professional employee* means an employee who meets the criteria in § 551.207.

*Reckless disregard of the requirements of the Act* means failure to make adequate inquiry into whether conduct is in compliance with the Act.

*Recognized organizational unit* means an established and defined organizational entity which has regularly assigned employees and for which a supervisor is responsible for planning and accomplishing a continuing workload. This distinguishes supervisors from leaders who head temporary groups formed to perform assignments of limited duration.

*Situations 1 through 4* means the four basic situations described under Factor I, Nature of Supervisory Responsibility, in the *Federal Wage System Job Grading Standard for Supervisors.* The situations depict successively higher levels of supervisory responsibility and authority for scheduling work operations, planning use of resources to accomplish work, directing subordinates in

performing work assignments, and carrying out administrative duties.

*Statute of limitations* means the time frame within which an FLSA pay claim must be filed, starting from the date the right accrued. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years.

*Suffered or permitted work* means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

*Supervisory and closely related work* means work that is included in the calculation of exempt work for supervisory positions.

(1) Work is considered closely related to exempt supervisory work if it contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both. Examples of closely related work include the following:

(i) Maintaining various records pertaining to workload or employee performance;

(ii) Performing setup work that requires special skills, typically is not performed by production employees in the occupation, and does not approach the volume that would justify hiring a specially trained employee to perform; and

(iii) Performing infrequently recurring or one-time tasks which are impractical to delegate because they would disrupt normal operations or take longer to explain than to perform.

(2) Activities in which both workers and supervisors are required to engage themselves are considered to be closely related to the primary duty of the position, for example, physical training during tours of duty for firefighting and law enforcement personnel.

*Temporary work or duties* means work or duties an employee must temporarily perform that are not consistent with the primary or grade-controlling duty of the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location.

*Title 5 overtime pay*, for the purpose of § 551.208, means overtime pay under part 550 of this chapter.

*Trainee* means a person who does not meet the definition of employee in this section and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a trainee and, therefore, is not an employee of the Government of the United States for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

*Volunteer* means a person who does not meet the definition of employee in this section and who volunteers or donates his or her service, the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

*Willful violation* means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

*Work of an intellectual nature* means work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work requiring mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

*Work of a specialized or technical nature* means work which requires substantial specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject matter field. This knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledge characteristically acquired through specialized academic education.

*Workday* means the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. The term is further explained in § 551.411.

*Worktime*, for the purpose of determining FLSA exemption status, means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.

*Worktime in a representative workweek* means the average percentages of worktime over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.

*Workweek* means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

*Workweek basis* means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

3. Subpart B is revised to read as follows:

## Subpart B—Exemptions and Exclusions

Sec.

**§ 551.201 Agency authority.**

The employing agency may designate an employee FLSA exempt only when the agency correctly determines that the employee meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

**§ 551.202 General principles governing exemptions.**

In all exemption determinations, the agency must observe the following principles:

(a) Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(e) There are groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories. These groups include the following:

(1) Nonsupervisory General Schedule employees in equipment operating and protective occupations, and most clerical occupations (see the definition of *participation in the executive or administrative functions of a management official* in subpart A of this part);

(2) Nonsupervisory General Schedule employees performing technician work in positions properly classified below GS–9 (or the equivalent level in other comparable white-collar pay systems) and many, but not all, of those positions properly classified at GS–9 or above (or the equivalent level in other comparable white-collar pay systems); and

(3) Nonsupervisory General Schedule employees at any grade level in occupations requiring highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience, such as the Air Traffic Control series, GS–2152, or the Aircraft Operations series, GS–2181, unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. All exempt work, regardless of category, must be considered. The only restriction is that, when the requirements of one category are more stringent, the combination of exempt work must meet the more stringent requirements.

(g) Failure to meet the criteria for exemption under what might appear to be the most appropriate criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria.

(i) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee.

**§ 551.203 Exemption of General Schedule employees.**

(a) *GS–4 or below.* Any employee in a position properly classified at GS–4 or below (or the equivalent level in other comparable white-collar pay systems) is nonexempt, unless the employee is subject to the foreign exemption in § 551.209.

(b) *GS–5 or above.* Any employee in a position properly classified at GS–5 or above (or the equivalent level in other comparable white-collar pay systems) is exempt only if the employee is an executive, administrative, or professional employee as defined in this subpart, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

**§ 551.204 Exemption of Federal Wage System employees.**

(a) *Nonsupervisory.* A nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

(b) *Supervisory.* A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee as defined in § 551.205, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

**§ 551.205 Executive exemption criteria.**

An *executive employee* is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees and meets both of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee—

(1) Has authority to make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting subordinate employees, or has authority to suggest or recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) *80-percent test.* In addition to the primary duty test that applies to all employees, the following employees must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work to meet the 80-percent test:

(1) Employees in positions properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems);

(2) Firefighting or law enforcement employees in positions properly classified in the General Schedule at GS–7, GS–8, or GS–9 who are subject to

section 207(k) of title 29, United States Code; and

(3) Supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

**§ 551.206 Administrative exemption criteria.**

An administrative employee is an advisor or assistant to management, a representative of management, or a specialist in a management or general business function or supporting service and meets all four of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee's work—

(1) Significantly affects the formulation or execution of management programs or policies; or

(2) Involves management or general business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) *Nonmanual work test.* The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions to meet the 80-percent test.

**§ 551.207 Professional exemption criteria.**

A *professional employee* is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) *Primary duty test.* The primary duty test is met if the employee's work consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee; or

(3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or

(ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

(iii) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(iv) A combination of the duties described in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section, the performance of which requires the same level of skills.

(b) *Intellectual and varied work test.* The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems), must spend 80 percent or more of the worktime in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

**§ 551.208 Effect of performing temporary work or duties on FLSA exemption status.**

(a) *Applicability.*

(1) *When applicable.* This section applies only when an employee must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location. The FLSA exemption status of employees during a period of temporary work or duties must be determined as described in this section.

(2) *When not applicable.* This section does not apply when an employee is detailed to an identical additional position as the employee's position or to a position of the same grade, series code, basic duties, and FLSA exemption status as the employee's position.

(b) *Effect on nonexempt employees.*

(1) A nonexempt employee who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains nonexempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 calendar days; and

(ii) *Exempt work or duty.* The employee's primary duty for the period of temporary work or duties is exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situation 3 or 4.* The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If a nonexempt employee becomes exempt under the criteria in paragraph (b)(1) of this section—

(i) The employee must be considered exempt for the entire period of temporary work or duties; and

(ii) If the employee received FLSA overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee is now not entitled to the FLSA overtime pay received but may be owed title 5 overtime pay.

(c) Effect on exempt employees.

(1) An exempt employee not covered by the special provision of paragraph (c)(3) of this section who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains exempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 calendar days; and

(ii) *Not exempt work or duty*. The employee's primary duty for the period of temporary work or duties is *not* exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situation 3 or 4*. The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If an exempt employee becomes nonexempt under the criteria in paragraph (c)(1) of this section—

(i) The employee must be considered nonexempt for the entire period of temporary work or duties; and

(ii) If the employee received title 5 overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee may now not be entitled to some or all of the title 5 overtime pay received but may be owed FLSA overtime pay.

(3) *Special provision for exempt employees at GS–5 or GS–6, or below situation 3*. The exemption status of certain exempt employees who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of their official position description must be determined on a workweek basis for the period of temporary work or duties. Such employees are exempt employees whose positions (including a position to which the employee is temporarily promoted) are properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems), or are properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems). The exemption status determination of these employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for a given workweek *only* if the employee performs exempt work or duties for 80 percent or more of the worktime in that workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for a given workweek *only* if the employee performs nonexempt work or duties for more than 20 percent of the worktime in that workweek.

(d) *Emergency situation*. Notwithstanding any other provisions of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to temporarily perform work or duties in connection with the emergency. In such a designated emergency—

(1) *Nonexempt employee.* The exemption status of a nonexempt employee remains nonexempt whether the employee performs nonexempt work or exempt work during the emergency; and

(2) *Exempt employee.* The exemption status of an exempt employee must be determined on a workweek basis. The exemption status determination of exempt employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for any workweek in which the employee performs exempt work or duties for 80 percent or more of the worktime in a given workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for any workweek in which the employee performs nonexempt work or duties for more than 20 percent of the worktime in a given workweek.

### § 551.209 Foreign exemption criteria.

(a) *Application*. When the *foreign exemption* applies, the minimum wage, overtime, and child labor provisions of the Act do not apply to *any* employee who spends *all* hours of work in a given workweek in an exempt area. When an employee meets one of the two criteria in paragraph (b) of this section, the foreign exemption applies until the employee spends *any* hours of work in any nonexempt area as defined in § 551.102.

(b) *Foreign exemption applies*. If an employee meets one of the two following criteria, the employee is subject to the foreign exemption of the Act and the minimum wage, overtime, and child labor provisions of the Act do not apply:

(1) The employee is permanently stationed in an exempt area and spends *all* hours of work in a given workweek in one or more exempt areas; or

(2) The employee is not permanently stationed in an exempt area, but spends *all* hours of work in a given workweek in one or more exempt areas.

(c) *Foreign exemption does not apply*. For any given workweek, the minimum wage, overtime, and child labor provisions of the Act apply to an employee permanently stationed in an exempt area who spends *any* hours of work in any nonexempt area. For that workweek, the employee is not subject to the foreign exemption, and the agency must determine the exemption status of such an employee as described paragraphs (c)(1) and (c)(2) of this section. The foreign exemption does not resume until the employee again meets one of the criteria in paragraph (b) of this section.

(1) *Same duties*. If the duties performed during that workweek are consistent with the primary or grade-controlling duties of the employee's official position description, the agency must designate the employee the same FLSA exemption status as if the employee were permanently stationed in any nonexempt area.

(2) *Different duties*. If the duties performed during that workweek are not consistent with the primary or grade-controlling duties of the employee's official position description—

(i) The agency must first designate the employee the same FLSA exemption status as the employee would have been designated based on the duties included

in the employee's official position description if the employee were permanently stationed in any nonexempt area; and

(ii) The agency must determine the employee's exemption status for that workweek by applying § 551.208.

(d) *Resumption of foreign exemption.* When an employee returns to any exempt area from performing any hours of work in any nonexempt area, the employee is not subject to the foreign exemption until the employee meets one of the criteria in paragraph (b) of this section.

**§ 551.210 Exemption of employees receiving availability pay.**

The following employees are exempt from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under § 550.181 of this chapter; and

(b) A pilot employed by the United States Customs Service who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

**§ 551.211 Statutory exclusion.**

A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of section 267 of title 19, United States Code, for time worked may not receive pay or other compensation for that work under any other provision of law. As used in section 5, the term ''customs officer'' means a United States Customs Service supervisory or nonsupervisory customs inspector or a supervisory or nonsupervisory canine enforcement officer.

4. Subpart F is added to read as follows:

## Subpart F—Child Labor

Sec.
551.601 Minimum age standards.
551.602 Responsibilities.

**§ 551.601 Minimum age standards.**

(a) *16-year minimum age.* The Act, in section 3(l), sets a general 16-year minimum age, which applies to all employment subject to its child labor provisions, with certain exceptions not applicable here.

(b) *18-year minimum age.* The Act, in section 3(l), also sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

**§ 551.602 Responsibilities.**

(a) *Agencies* must remain cognizant of and abide by regulations and orders published in part 570 of title 29, Code of Federal Regulations, by the Secretary of Labor regarding the employment of individuals under the age of 18 years. These regulations and orders govern the minimum age at which persons under the age of 18 years may be employed and the occupations in which they may be employed. Persons under the age of 18 years must not be employed in occupations or engage in work deemed hazardous by the Secretary of Labor.

(b) *OPM* will decide complaints concerning the employment of persons under the age of 18 years. Complaints must be filed following the procedures set forth in subpart G of this part.

5. Subpart G is added to read as follows:

## Subpart G—FLSA Claims and Compliance

Sec.
551.701 Applicability.
551.702 Time limits.
551.703 Avenues of review.
551.704 Claimant's representative.
551.705 Filing an FLSA claim.
551.706 Responsibilities.
551.707 Withdrawal or cancellation of an FLSA claim.
551.708 Finality and effect of OPM FLSA claim decision.
551.709 Availability of information.
551.710 Where to file an FLSA claim with OPM.

**§ 551.701 Applicability.**

(a) *Applicable.* This subpart applies to FLSA exemption status determination claims, FLSA pay claims for minimum wage or overtime pay for work performed under the Act, and complaints arising under the child labor provisions of the Act.

(b) *Not applicable.* This subpart does not apply to claims or complaints arising under the equal pay provisions of the Act. The equal pay provisions of the Act are administered by the Equal Employment Opportunity Commission.

**§ 551.702 Time limits.**

(a) *Claims.* A claimant may at any time file a complaint under the child labor provisions of the Act or an FLSA claim challenging the correctness of his or her FLSA exemption status determination. A claimant may also file an FLSA claim concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations (3 years for willful violations).

(b) *Statute of limitations.* An FLSA pay claim filed on or after June 30, 1994, is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, a determination must be made as to whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

(c) *Preserving the claim period.* A claimant or a claimant's designated representative may preserve the claim period by submitting a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM. The claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back *from the date the claim was received.*

**§ 551.703 Avenues of review.**

(a) *Negotiated grievance procedure (NGP) as exclusive administrative remedy.* If at any time during the claim period, a claimant was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude matters under the Act from the scope of the negotiated grievance procedure, the claimant must use that negotiated grievance procedure as the exclusive *administrative* remedy for all claims under the Act. There is no right to further administrative review by the agency or by OPM. The remaining sections in this subpart (that is, §§ 551.704 through 551.710) do not apply to such employees.

(b) *Non-NGP administrative review by agency or OPM.* A claimant may file a claim with the agency employing the claimant during the claim period or with OPM, but not both simultaneously, regarding matters arising under the Act if, during the entire claim period, the claimant—

(1) Was not a member of a bargaining unit, or

(2) Was a member of a bargaining unit not covered by a collective bargaining agreement, or

(3) Was a member of a bargaining unit covered by a collective bargaining agreement that specifically excluded matters under the Act from the scope of the negotiated grievance procedure.

(c) *Judicial review.* Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court. Filing a claim with an agency or with OPM does not satisfy the statute of limitations governing FLSA claims filed in court. OPM will not decide an FLSA claim that is in litigation.

**§ 551.704 Claimant's representative.**

A claimant may designate a representative to assist in preparing or presenting a claim. The claimant must designate the representative in writing. A representative may not participate in OPM interviews unless specifically requested to do so by OPM. An agency may disallow a claimant's representative who is a Federal employee in any of the following circumstances:

(a) When the individual's activities as a representative would cause a conflict of interest or position;

(b) When the designated representative cannot be released from his or her official duties because of the priority needs of the Government; or

(c) When the release of the designated representative would give rise to unreasonable costs to the Government.

**§ 551.705 Filing an FLSA claim.**

(a) *Filing an FLSA claim.* A claimant may file an FLSA claim with either the agency employing the claimant during the claim period or with OPM, but a claimant cannot pursue the same claim with both at the same time. OPM encourages a claimant to obtain a decision on the claim from the agency before filing the claim with OPM. However, a claimant is not required to do this. This a matter of personal discretion and a claimant may use either avenue. A claimant who receives an unfavorable decision on a claim from the agency may still file the claim with OPM. However, a claimant may not file the claim with the agency after receiving an unfavorable decision from OPM. An OPM decision on a claim is final and is not subject to further administrative review.

(b) *FLSA claim filed with agency.* An FLSA claim filed with an agency should be made according to appropriate agency procedures. At the request of the claimant, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (b) of this section.

(c) *FLSA claim filed with OPM.* An FLSA claim filed with OPM must be made in writing and must be signed by the claimant or the claimant's representative. Relevant information may be submitted to OPM at any time following the initial submission of a claim to OPM and prior to OPM's decision on the claim. The claim must include the following:

(1) The identity of the claimant (see § 551.706(a)(2) regarding requesting confidentiality) and any designated representative, the agency employing the claimant during the claim period, the position (job title, series, and grade) occupied by the claimant during the claim period, and the current mailing address, commercial telephone number, and facsimile machine number, if available, of the claimant and any designated representative;

(2) A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;

(3) A description of actions taken by the claimant to resolve the claim within the agency and the results of any actions taken;

(4) A copy of any relevant decision or written response by the agency;

(5) Evidence available to the claimant or the claimant's designated representative which supports the claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to the claim;

(6) The remedy sought by the claimant;

(7) Evidence, if available, that the claim period was preserved in accordance with § 551.702. The date the claim is received by the agency or OPM becomes the date on which the claim period is preserved;

(8) A statement from the claimant that he or she was or was not a member of a collective bargaining unit at any time during the claim period;

(9) If the claimant was a member of a bargaining unit, a statement from the claimant that he or she was or was not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure;

(10) A statement from the claimant that he or she has or has not filed an action in an appropriate United States court; and

(11) Any other information that the claimant believes OPM should consider.

**§ 551.706 Responsibilities.**

(a) *Claimant.*

(1) *Providing information to OPM.* For all FLSA claims, the claimant or claimant's designated representative must provide any additional information requested by OPM within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. The disclosure of information by a claimant is voluntary. However, OPM may be unable to render a decision on a claim without the information requested. In such a case, the claim will be cancelled without further action being taken by OPM. In the case of an FLSA pay claim, it is the claimant's responsibility to provide evidence that the claim period was preserved in accordance with § 551.702 and of the liability of the agency and the claimant's right to payment.

(2) *Requesting confidentiality.* If the claimant wishes the claim to be treated confidentially, the claim must specifically request that the identity of the claimant not be revealed to the agency. Witnesses or other sources may also request confidentiality. OPM will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be cancelled with no further action by OPM unless the claimant *voluntarily* provides written authorization for his or her name to be revealed.

(b) *Agency.*

(1) In FLSA exemption status determination claims, the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) Upon a claimant's request, and subject to any Privacy Act requirements, an agency must provide a claimant with information relevant to the claim.

(4) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless the agency requests additional time and OPM grants a longer period of time in which to provide the requested information.

**§ 551.707 Withdrawal or cancellation of an FLSA claim.**

(a) *Withdrawal.* A claimant or the claimant's representative may withdraw a claim at any time prior to the issuance of an OPM FLSA claim decision by providing written notice to the OPM office where the claim was filed.

(b) *Cancellation.* OPM may, at its discretion, cancel an FLSA claim if the claimant or the claimant's designated representative fails to provide requested information within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. OPM may, at its discretion, reconsider a cancelled claim on a showing that circumstances beyond the claimant's control prevented pursuit of the claim.

**§ 551.708 Finality and effect of OPM FLSA claim decision.**

OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. At its discretion, OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision. A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act. Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence with compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with the decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM.

**§ 551.709 Availability of information.**

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant before disclosing the information in an FLSA claim file to the parties concerned. For the purposes of this subpart, *the parties concerned* means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The remedy sought;

(3) The status of the claim;

(4) The decision on the claim; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

**§ 551.710 Where to file an FLSA claim with OPM.**

An FLSA claim must be filed with the OPM office serving the area where the cause or basis of the claim occurred. Following are OPM addresses and service areas.

**OPM Atlanta Oversight Division**

75 Spring Street SW., Suite 972, Atlanta, GA 30303–3109

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except the Virginia locations listed under the Washington, DC Oversight Division)

**OPM Chicago Oversight Division**

230 S. Dearborn Street, DPN 30–6, Chicago, IL 60604–1687

llinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin

**OPM Dallas Oversight Division**

1100 Commerce Street, Room 4C22, Dallas, TX 75242–9968

Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming

**OPM Philadelphia Oversight Division**

600 Arch Street, Room 3400, Philadelphia, PA 19106–1596

Connecticut, Delaware, Maine, Maryland (except the Maryland locations listed under the Washington, DC Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands

**OPM San Francisco Oversight Division**

120 Howard Street, Room 760, San Francisco, CA 94105–0001

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area

**OPM Washington, DC Oversight Division**

1900 E Street NW., Room 7675, Washington, DC 20415–0001

The District of Columbia

In Maryland: the counties of Charles, Montgomery, and Prince George's.

In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area not listed in the service area of another Oversight division.

[FR Doc. 97–33429 Filed 12–22–97; 8:45 am]

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Federal Register

Tuesday
December 23,1997

## Part VI

# Department of Education

**School Improvement Programs—Women's Educational Equity Act; Notice**

## DEPARTMENT OF EDUCATION

### School Improvement Programs—Women's Educational Equity Act

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On October 9, 1997, the Department published a notice inviting applications for new awards for fiscal year 1998 for the Women's Educational Equity Act (WEEA) program (62 FR 52916). The deadline for receipt of applications under that notice was November 24, 1997. That notice indicated that an estimated $1,500,000 would be available for new awards. Because the Department received an appropriation for the program that was less than anticipated, it considered canceling the competition and notified applicants and potential applicants. However, upon further consideration, the Department has decided to run a competition for the limited funds that are available.

To allow potential applicants time to respond, the Department is establishing a new deadline for transmittal of applications and is changing the estimated number of awards for the WEEA implementation and research and development grants. Applications that have already been submitted will be considered under this competition. However, if an applicant wishes to amend its application, amendments must be submitted by the new deadline established by this notice.

*Deadline for Transmittal of Applications:* January 21, 1998.

*Deadline for Intergovernmental Review:* March 31, 1998.

*Estimated Available Funds:* $500,000.

*Estimated Number of Awards:* Implementation Grants: 2; Research and Development Grants: 1–2.

**Note:** The Department is not bound by any estimates in this notice.

**FOR FURTHER INFORMATION CONTACT:** Beth Baggett, U.S. Department of Education, Room 4500, the Portals Building, 600 Independence Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.* Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Note:** The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

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http://ww.edgov/news.html.

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

**Program Authority:** 20 U.S.C. 7231–7238.

Dated: December 18, 1997.

**Gerald N. Tirozzi,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 97–33446 Filed 12–12–97; 8:45 am]

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**Federal Register**

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## FEDERAL REGISTER PAGES AND DATES, DECEMBER



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Physician fee schedule (1998 CY); payment policies and relative value unit adjustments

Practice expense relative value units adjustments; implementation delay; comments due by 12-30-97; published 10-31-97

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Findings on petitions, etc.—

Northern goshawk; comments due by 12-29-97; published 9-29-97

**NUCLEAR REGULATORY COMMISSION**

Production and utilization facilities; domestic licensing:

Light-water power reactors; criticality accident

## LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

**Note:** A Cumulative List of Public Laws will be published in the **Federal Register** on December 31, 1997.

## Public Laws Electronic Notification Service (PENS)

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